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ABSTRACT

The purpose of the American Indian Policy Review Commission hearing on June 4, 1976, was to give the Commissioners an opportunity to hear each task force restate and clarify relevant issues and preliminary recommendations. Two points that emerged from the session were: the need for a specific process whereby the Federal Government recognizes tribes and the noninvolvement of the Federal Government in defining who is and is not an Indian (this should be left up to the tribes). One major objective of Task Force No. 2 was to define clearly the relationship between the federal government and Indian tribes, including the political status of Indian tribal governments commensurate with the views of Indian people across the country. One spokesman reviewed the main obstacles of economic development: an example is when reservation resources are developed by others the proceeds are then siphoned off by state taxation. The meeting held in Portland, Oregon, covered the controversy of hunting and fishing rights and several court cases concerned with the controversy. (AN)

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# U.S. SENATE
# SELECT COMMITTEE ON INDIAN AFFAIRS

# MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

JUNE 4, AUGUST 10, AND SEPTEMBER 25, 1976

WASHINGTON, D.C. AND PORTLAND, OREG.

VOLUME 3

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
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# MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

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**FRIDAY, JUNE 4, 1976**

AMERICAN INDIAN POLICY REVIEW COMMISSION,
*Washington, D.C.*

The Commission met, pursuant to notice, at 9:30 a.m., in room EF-100, the Capitol, Senator James Abourezk (chairman) presiding.

Present: Senator Abourezk; Congressmen Yates and Meeds; and Commissioners Deer, Bruce, Whitecrow, and Dial.

Also present: Ernest L. Stevens, staff director; Kirke Kickingbird, general counsel; and Max Richtman, professional staff member.

Chairman ABOUREZK. The American Indian Policy Review Commission meeting will come to order. I would like to ask the cooperation of everybody. The acoustics are not the greatest in here, it is a small room and it is going to be noisy. When everybody whispers, everybody else can hear. I would be grateful if you would do it quietly so we can hear the people testifying today.

I have one announcement to make prior to my opening statement. That is that the people who brought the lawsuit against the American Indian Policy Review Commission, lost the lawsuit in the Federal district court at the trial level. They entered an appeal to the U.S. Supreme Court on May 19.

I am advised by our legal counsel that the other side filed a motion to dismiss their appeal, so the lawsuit is all over with. It was never a source of great concern to any of us, but it was a source of some harassment and took up a bit of time of our legal staff.

I always thought the lawsuit was over with before it started anyhow, so it is welcome news to the Commission.

We are here today to discuss, review, and make appropriate comments on the third quarterly reports. The law requires each task force to report its progress to the Commission by submitting written quarterly reports.

The Commission also has the authority to require, at its discretion, an oral presentation of each report. The purpose of this meeting of the American Indian Policy Review Commission is to give the Commissioners an opportunity to review the third quarterly reports of each task force's progress. Furthermore, after this review process, the Commission will be able to determine when each task force's final report must be submitted. Task forces may be required to submit final reports prior to their originally scheduled deadlines if reports continue to be unsatisfactory.

By the end of the third quarter, each task force should have restated and clarified the relevant issues and presented preliminary conclusions and tentative recommendations. Todays review will center on examining issues, conclusions, and recommendations.

Opening statements and introductory remarks are unnecessary. We will proceed, with each one, directly to the review questions. Do any Commission members have anything they want to say?

[No response.]

Chairman Abourezk. We will go to Task Force No. 1 and proceed as rapidly as possible through all the task forces. Is No. 1 here?

## STATEMENT OF HANK ADAMS, CHAIRMAN, TASK FORCE NO. 1, ACCOMPANIED BY KEVIN GOVER

Mr. Adams. I am Hank Adams, chairman of Task Force No. 1; trust responsibility and the Federal-Indian relationship, including treaty review.

Congressman Yates. Mr. Chairman, we all want to hear what he is saying. He is talking only to you.

Mr. Adams. With me is Kevin Gover, specialist with the task force.

Since the chairman stated that opening statements have been dispensed with, I have no opening statement.

Chairman Abourezk. First of all, how far along are you on your final report to be submitted to the Commission?

Mr. Adams. We are just going into the drafting on the final report at this point. We have virtually, I would say 95 percent—well, 100 percent of all direct research done. There are details we are still trying to get from Government agencies and answers to specific questions or some specific detailed information. Other than that, we are proceeding to the drafting and writing of the final report.

Chairman Abourezk. When will you complete that draft?

Mr. Adams. We will be completed with our final report on the date of expiration of the task force.

Chairman Abourezk. When is that?

Mr. Adams. July 20.

Chairman Abourezk. You will have your report submitted to the Commission on or before July 20?

Mr. Adams. Yes.

Chairman Abourezk. What was the objective of your task force?

Mr. Adams. The basic objective was to analyze and study treaties, statutes, court decisions for one, to clarify and perhaps better define the unique status and relationship of Indian tribes to the people or to the United States; to clarify just what was the character and the nature of the Federal-Indian relationship; to clarify and define just what is the nature and character of trust responsibilities; and to review treaties for the purpose of communicating just what is the standing and viability of treaties with Indian tribes in the life of Indians as well as the life of this Nation.

Congressman Yates. May I ask a question, Mr. Chairman?

Chairman Abourezk. Yes.

Congressman Yates. What is the conclusion about the trust responsibility to the off-reservation Indians? I look at your task force report and I don't get a precise answer there. Let me read the paragraph.

Extensive documentation of the trust relationship with Indians would be provided to verify that the relationship embraces the sovereign entities of Indian tribes and that the trust responsibilities relate directly to Indian people, property and rights.

Per tribe: What happens to the individual when he leaves the tribe? Does the Government's trust responsibility cease to exist? As for example, during the Eisenhower administration the national policy was to try to persuade Indians to leave reservations and go to the cities and get good jobs there.

Mr. Adams. Essentially, what we are indicating is a person does not leave his tribe just by physical mobility. The fact is, there are only a few methods of separation from ones tribe and from the Federal trust responsibility and that is by expatriation of some form or another.

In fact, the Federal obligation carries with an individual person as long as he is in tribal relations, whether he goes to Los Angeles or comes here to the District of Columbia.

Just one of the Alaskan Native corporations, the North Slope Alaskan Corp., has Native people in 56 different counties of the United States and we do not see a severance of responsibility, either by the Native corporation or the United States, to those Eskimo people just because they are not located right now on the North Slope.

Congressman Yates. When you say you don't see it: Is your contention sustained by the law?

Mr. Adams. Our contention is sustained by the law and we do feel there has been a misapplication or an administrative voidance of a law by failure to recognize the code of Federal responsibilities and the full application of the law from a standpoint of eligibility.

We have looked at a number of tribes just to see where their populations are, like the Yakima Tribe. It has 25 percent of its population off the reservation and the tribe recognizes the responsibility to those members, but the Federal Government does not. However, there are a comparable number of Indians from other reservations on the Yakima Reservation and the Federal Government recognizes eligibility for those non-Yakimas just because they are on the Yakima Reservation.

It has seen a severance of responsibility for those Yakimas who have gone away, if they have gone away to a nonreservation area, but it picks them up if they go to Quinault, an Oregon reservation. That mobility has been misapplied and has been a real unnecessary problem for Indians.

Congressman Yates. The term mobility, as you use it: Does that apply to movement from one reservation to another or does it apply as well to a movement from the reservation to the city?

Mr. Adams. It applies under the law as we see it. Byron Ellis' going from, say, Yakima to Los Angeles or Yakima to Chicago. However, that is not the application that has been given.

Congressman Yates. Do the tribes recognize that? In conversations with Mr. Sinnett of the BIA, he indicates the tribes themselves are opposed to recognizing the responsibility of the Government to the Indian people who leave the reservation. What has been your experience in talking to the tribesmen?

Mr. ADAMS. In directly asking the tribes and tribal witnesses in hearings on this question: The tribes have been saying that the Federal responsibility and the Federal obligations carry with our people when they leave the reservation.

I would acknowledge that the framing of questions perhaps leads, in some parts, to the result. We did not ask Yakimas if they felt the same way about other tribes as they do about their members. They may think that is great for Yakimas but they may not have that same concern about a Navajo going from Window Rock to Los Angeles.

Congressman YATES. To summarize then, what you propose to recommend finally, as we see it now, is the recognition of the trust responsibility by the Federal Government for Indian people, whether they are on the reservation or not. Is that correct?

Mr. ADAMS. Yes, that is correct. One of the things I think we are going to be able to demonstrate very well is the whole question of eligibility and this was mentioned at the last Commission meeting.

It is that although if there has been a general denial of eligibility of persons off the reservation from numerous Federal services, the fact is most Indians on reservations who have every eligibility are not getting the services, even though they have every entitlement to eligibility recognized by the United States.

Congressman MEEDS. In that case then: How do you define "Indian peoples" if the recognition runs to them whether they are on or off a reservation? Who defines who are "Indian people"?

Mr. ADAMS. This is another element of defining the trust responsibility. We are saying it can be well demonstrated, well proven by history and by law. Legal analysis that the basic trust responsibility goes from the United States to an Indian tribe rather than the person of individual Indians.

The basic definition of who is an Indian and who is eligible for that relationship is determined, or should be determined, in the first instance by the tribe.

Congressman YATES. By each tribe?

Mr. ADAMS. By each tribe for itself.

Congressman YATES. You are suggesting, in administering a trust relationship, the Government is to be bound by the interpretation given by each tribe as to what is an Indian for purposes of membership in that tribe?

Mr. ADAMS. That is correct. There are some problems in just accepting the current status of all Indians because there has been substantial Federal administrative intervention in membership in the past that has created some problems for a number of tribes. We are indicating there should be some period of realignment of membership before anything gets set solidly on who constitutes memberships of tribes.

You do have situations where persons of, say, fractional one-hundredths of Indian blood are automatically members of tribes by Federal law. You have Federal law determining, say, in the case of terminated Utes, where any of the terminated Utes less than half-blood cease to be Indians.

In the cases of some of the other terminated tribes like the Klamaths, you have full-bloods who have ceased to be Indians.

Congressman YATES. Under what conditions would your full-bloods cease to be an Indian?

**Mr. ADAMS.** Under explicit termination legislation, plus some of the Indian Reorganization Act constitutional governments. You have a number of things that were essentially imposed by the Federal Government. The Indian Reorganization Act constitutions very seldomly were motivated by the judgments of an Indian tribe and what was best for themselves. They were pretty much sold on this.

You have a number of provisions in constitutions that can disallow memberships for Indian tribes. You have many that have a residency at birth provision, so if a fullblood Indian couple are living, say in Los Angeles, when their child is born, that fullblood Indian may not be entitled to membership, except by adoption, in its tribe.

You have a number of fractionated bloodline provisions. You have it frequently easier, that you be entitled to membership, if you have one non-Indian parent than if you have two parents who are members and are fullblood Indians from different tribes or a fullblood Indian from several tribes.

Congressman **YATES.** Hank, is it the responsibility of your task force to define who is an Indian?

**Mr. ADAMS.** No; it is more our responsibility to characterize what are the rights of the tribes to define membership.

Congressman **YATES.** Mr. Chairman, may I ask staff which task force has the responsibility of defining who or what is an Indian?

**Mr. ADAMS.** We do have the responsibility of addressing that question in just the category of Federal-Indian relations.

Congressman **YATES.** I would assume the definition itself, if not yours, would be somebody's. Who has that?

Chairman **ABOUREZK.** I think it ought to be given to somebody. Somebody ought to have that responsibility.

**Mr. ADAMS.** I think a number of task forces are addressing it.

Commissioner **DIAL.** This wasn't given to any one task force to define. This would not be the responsibility of Mr. Adams alone. Neither would it be the work of Task Force 10, along with some other task forces, because they may very well disagree on what an Indian is.

Chairman **ABOUREZK.** Congressman Meeds just pointed out something that I think is very accurate. We will have a recommendation from a number of task forces. It will probably be the Commission's responsibility to make a final definition of it if we possibly can. I think it is going to be one of the most important things we can do. What procedural changes does the task force intend to recommend?

**Mr. ADAMS.** We expect to recommend that: A new Department of Indian Affairs or whatever it is called or whatever its name, and more clearly to clarify or define, in law, what the Federal obligations are.

Chairman **ABOUREZK.** That is policy. I have got a question on policy. In terms of procedure, what kind of things are you going to recommend?

**Mr. ADAMS.** Whose procedure?

Chairman **ABOUREZK.** Procedure on the part of the U.S. Government. What procedural changes will you recommend the U.S. Government undertake to fulfill a treaty responsibility?

**Mr. ADAMS.** We are going to recommend a basic restructuring of the relationship of the tribes with the administration or the executive body and we are going to recommend some procedural changes in consideration of Congress on these issues.

We are going to essentially propose a system of restored bilateral relationships——

Chairman **Abourezk**. What does that mean?

Mr. **Adams**. To involve Indian tribes in the decisionmaking processes, both with the Congress and with the executive branch. So that some of the powers taken away from the tribes and invested with the administrative branches—and in the past, churches, the Board of Indian Control that was in existence from 1869 to 1934—to give some of this decisionmaking power directly back to the tribes.

Again, to work on some basis of equality, both with the Congress in making its decisions relating to Indians, as well as the executive branch.

The powers that have been vested by Congress with other people—whether it be a Secretary of Interior, whether it be a Commissioner of Indian Affairs—we are going to recommend some of those powers be vested directly with the tribes again, so that there will be a reality to self-determination and involvement of Indians in decisionmaking processes.

What we see now is not self-determination but self-administration. The tribes administering themselves along the lines of procedure and rules, guidelines and regulations, that somebody else makes up for them.

Chairman **Abourezk**. Hank, I think what is important in this, not only for your task force but all of the task forces, you are all going to make policy recommendations of some kind or another and I know you have them and I know the other task forces have them.

It is up to you to give us specific ways of how those policies can be altered one way or the other. It is good to talk in general terms, as you have been talking, but a general intellectual discussion of what might be done or what is to be done is not enough. We are going to have to have it laid out just like a roadmap, so we can take the recommendations, if we adopt them, and present them to the legislative drafting service and put them right into bill form and try to move them through Congress.

What I am saying is that the Commission will not have the time and will not be able to expend the effort to take a general intellectual framework and transpose that into legislation. That is up to you, that is up to all of the task forces. I hope you will all keep in mind that is exactly what we need as you start writing your reports.

Mr. **Adams**. One of the things, also cognizant of our own time limitations, we are going to spell out all of the alternatives for future action. We are going to discuss different options, different alternatives, but without saying a step-by-step reform or we are not going to take one, say, component of BIA and say this is what should be done to change that, to reform.

We will try first, to spell out a complete new policy structural framework in the standards of how that new structure would best be able to fulfill responsibilities that the existing structure is not doing, rather than saying what minor or major changes should be made in the existing structure to do that.

So, we are not going step-by-step, just giving a slightly different character to the existing structure.

Commissioner **Bruce**. Hank, you are going to spell out the definition of trust responsibility and its execution?

Mr. **Adams**. Yes; we are.

Commissioner **Bruce**. I don't find it in your report, that is why I asked.

Mr. **Adams**. Yes; we are going to. But even at this late date, we are still directing questions to the Interior Department relating to what they consider to be trust responsibility. They are giving it a different application almost daily over there and they have statements, legal analyses written in the solicitor's office that are being rejected at the Secretary's level.

Legal analyses of trust responsibilities are still being adjudged for their political acceptability or nonacceptability by the political elements in the political department as well as the White House and Office of Management and Budget.

We are trying to get some clarification of where they are standing on their definitions or lack of definitions. We will give a clear-cut, straightforward statement of what we see as being both the nature of trust responsibilities as well as the standards that need to be upheld, some of the procedures that need to be followed, and both the administrative and judicial enforceability or liabilities attached to trust responsibilities.

Congressman **Meeds**. Mr. Chairman, first, Hank, I would like to compliment you on your report. I think it is a workmanlike job and obviously you have put in a lot of time. I would like to ask some questions with regard to the methodology and procedure first, rather than policy questions.

The first question asked by the gentlemen from Illinois indicates what I am really looking for here—the question of jurisdiction.

A question of trust responsibility, also has roots in other task forces. What kind of communication and work have you done with other task forces on that issue of who is an Indian? Task Forces 3, 4, and 8 are also asking that question. What kind of communication do you have with them with regard to questions like that?

Mr. **Adams**. We have had consultations and discussions, particularly with Task Force No. 2, on tribal government. The other member of our task force, John Echohawk, was with us at a meeting in Denver.

We have had discussions since the quarterly report on just these types of issues. I have had discussions with the education task force briefly, just on the question of how we were going to define or touch upon these questions with respect to, say, education, eligibility for services. We have had these discussions.

Congressman **Meeds**. Have you had any formal discussions or meeting with other task forces?

Mr. **Gover**. Task Forces 1, 2, 3, 4, and 9, in Denver. A coordination of issues meeting.

Congressman **Meeds**. How many of your task force members are active in your task force procedures, hearings, preparation of reports, and so on?

Mr. Adams. All three task force members have been active in the discussion of how we are going to treat issues. We had a meeting 2 weeks ago, after the quarterly report.

The meeting in Denver with the other task forces was prior to the development of the quarterly report. Our task force met with John Echohawk and Doug Nash, and we met also with the Director of the Commission——

Congressman Meeds. Who are the other task force members?

Mr. Adams. Doug Nash and John Echohawk.

Congressman Meeds. Are they working full time?

Mr. Adams. Both are working in their respective offices in Boulder, Colo., and in Pendleton, Oreg., on draft reports relating to trust responsibilities, treaties, and some of the things like water rights.

Congressman Meeds. Did they help you in the preparation of this report?

Mr. Adams. Only from a discussion basis, then I formulated it.

Chairman Abourezk. What about the research? Did they help with the research?

Mr. Adams. In part. They are, more or less, going to be moving into Washington for this final drafting portion of the report. They have not had the same opportunity to review all of our resource materials that are mostly centered here in the Washington office, but they have done independent research, as well as major documents that we have sent to them.

Congressman Meeds. What kind of cooperation are you getting from the staff director and the core staff?

Mr. Adams. Generally we are getting cooperation as far as if we ask for anything. There has been one problem that has been disturbing to me, that has come up in the last month or two.

Congressman Meeds. What is that?

Mr. Adams. That is a failure to receive certain items that are sent to me in the mail or by telegram.

Congressman Meeds. Are you not in the same building?

Mr. Adams. We are in the same building.

Congressman Meeds. Why is it necessary to send telegrams in the same building?

Mr. Adams. No; to receive messages that are sent to me from tribes by Western Union or U.S. Postal Service that are logged in as being received but never reach my task force or myself.

Congressman Meeds. Who is the person on the core staff responsible for that?

Mr. Adams. I would presume that Max Richtman has the administrative responsibility for that. They are trying to track down some things that have come to me through the secretaries and through the point of being logged in. We have been unable to locate them.

Congressman Meeds. When did you receive the critique on your last quarterly report?

Mr. Adams. I have not received a critique on my last quarterly report.

Congressman Meeds. Has anybody instructed you as to any shortcomings or problems with your last quarterly report?

Mr. **Adams**. There have been discussions with the Director. We have had a number of discussions just on directions and basic content.

Congressman **Meeds**. No critique in writing then?

Mr. **Adams**. No critique in writing.

Congressman **Meeds**. Are you using any of the experts or consultants on the core staff?

Mr. **Adams**. Primarily in documentation acquisitions.

Congressman **Meeds**. In documentation acquisitions?

Mr. **Adams**. In document acquisitions. In getting specific items.

Congressman **Meeds**. How many hours would you judge you have used the core staff experts or consultants in the last quarter?

Mr. **Adams**. I would probably guess less than 5 man-days.

Congressman **Meeds**. How many consultants do you have?

Mr. **Adams**. We have had two.

Congressman **Meeds**. Who are they?

Mr. **Adams**. One is Michael Hughes, working with us in relation to water rights questions in the southwest; and the other is Vincent Knight, who is finalizing work on some Oklahoma issues.

Congressman **Meeds**. What kind of cooperation are you getting from Federal agencies?

Mr. **Adams**. We have had a problem with the Department of Interior on a scheduled hearing. That was when we got responses from different people in the Department of Interior, from the Solicitor's Office, from the Fish and Wildlife Office, from the Bureau of Indian Affairs, saying they would appear at our hearings but those were all canceled by the Secretary's office.

We were going to have a hearing in the Bureau of Indian Affairs or in the Interior Department auditorium.

Congressman **Meeds**. Why were they canceled?

Mr. **Adams**. Why were they canceled?

Congressman **Meeds**. Yes.

Mr. **Adams**. Because we were informed indirectly and directly—well, indirectly by some of the agencies—the Secretary's office wanted to control the content of any statements made by any of the bureaus or agencies and they wanted us to reapproach them and just deal through the Secretary' office.

Congressman **Meeds**. Did you do that?

Mr. **Adams**. We canceled our hearing and said, yes, we will present these to the Secretary and we have submitted it.

Congressman **Meeds**. You have not had, at this juncture, any substantial input into the question of trust responsibility from and through Federal agendies?

Mr. **Adams**. That is not——

Congressman **Meeds**. Not quite accurate? Don't be afraid to say so.

Mr. **Adams**. We have gotten some good response from agencies and superintendencies relating to land use and lease records. A number of things we sent out to the field we have gotten good response to.

Congrssman **Meeds**. How about from the Secretarial level or Deputy-Secretarial level? For example, Kent Frizzell right now is doing a paper on the question of trust responsibility to nonrecognized tribes. Have you talked to him about the policy and how they are determining the policy down there?

Mr. ADAMS. We have directed questions to Mr. Frizzell but Mr. Frizzell is the one who canceled out the independent presentation by anyone under the Secretary's office. He canceled out direct talks with Reed Chambers, who canceled out direct appearances by Lynn Greenwalt of the Fish and Wildlife Services and the other Federal agencies in the Department of the Interior. In a sense, Mr. Frizzell has indicated that he, or Secretary Kleppe, are the only ones in the Department from whom we should get our answers.

Congressman MEEDS. Have you informed the Director of that problem?

Mr. ADAMS. Perhaps not directly. We don't necessarily see it fully as a problem, because we do have a good deal of documentation that we have from each of those offices, that we don't necessarily need.

That direct discussions about say, are you still standing on this position, on some of the many papers already done on trust responsibilities in the past few years——

Congressman MEEDS. You are getting your information through the Solicitor's opinions and elsewhere?

Mr. ADAMS. We are getting our issues through daily processing of issues. We are getting documents out of that Department, whether or not they are given to us by the Secretary.

Another office that is very helpful to us is the Forestry Division of the Bureau of Indian Affairs. Apparently, in a sort of cryptic letter we got from them 2 days ago there was an indication that Greg Stephens has had his hands whacked off for handing materials out—not only to us but to Members of the Congress.

I have not been able to get back to him since receiving that letter 2 days ago, to see if their cooperation with us has been suffering from any instruction in just cooperating.

Commissioner DEER. Have you used any paid consultants?

Mr. ADAMS. We have not been using any paid consultants. Two people we initially indicated would be consultants are still available to help us on review and writing activities in the next 50 days. That is Gary Orfield and Bill Rogers, a law professor at Georgetown. That would not be in a paid capacity—that would be a personal assistance basis.

Commissioner DEER. What other problems do you anticipate from your task force or with your task force? How can they be helped?

Commissioner WHITECROW. I am sorry, Mr. Chairman, I can't hear a thing.

Chairman ABOUREZK. I am going to call a 5 minute recess until they set up this public address system.

[A short recess was taken.]

Chairman ABOUREZK. The question is, "What will be your specific legislative recommendations?

Mr. ADAMS. We are doing a draft bill on an organized new department, at the Secretary or Cabinet level, entitled the "Department of Indian Affairs."

Chairman ABOUREZK. Does that have a trust council authority concept included in it?

Mr. ADAMS. The trust council authority concept will be tied into that organizational plan, but our judgment is the Bureau of Indian

Affairs in the Department of Interior cannot carry out its obligations.

Chairman **Abourezk**. You are suggesting it should be removed from the Interior Department?

Mr. **Adams**. Yes.

Chairman **Abourezk**. How about congressional committees? Should they be separate committees? The Indian Affairs Subcommittee should be out of the Interior Committee?

Mr. **Adams**. Yes; it should be. There should be some way of divorcing the dealings of Indians at the congressional level from the committee structure of Congress.

There are several ways the Congress operates out of committee and subcommittee jurisdictions; the Economic Committee, the Budget Committees of the House and Senate. We are going to ask for something different on the part of Congress in dealing with the tribes.

Chairman **Abourezk**. What will that consist of?

Mr. **Adams**. I am not certain of the final form right now. We are discussing this with a number of people. We are reporting on a number of things we see as problems in the relationship between Indian tribes and the Congress.

Some very recent activities we will be reporting on, for instance, is the introduction into the Senate of the United States of the Arizona tribe's water bill. We have statements from two Senators of the United States, who have made public statements to the effect these are our Indians, they aren't any other Senator's Indians.

In trying to localize problems when you are dealing with national obligations, the area Indians don't belong to Senator Goldwater or Senator Fannin and it is a problem. If a Senator can control what happens to Indians in his State, the same as Senators can control who get on the Federal bench in the Judiciary, we think there is something wrong in that relationship and we are going to be reporting on some of these type of things in building this case for a new relationship with Congress.

Commissioner **Deer**. I would like to return to my previous question about use of these consultants. What will they be doing now?

Mr. **Adams**. Primarily, the consultants we have are submitting reports to us and we will determine what usage we will make of those reports they submit to us. On the personal aid or nonpaid assistance from Mr. Orfield and Mr. Rogers: That is primarily a work area of review in trying to refine some of our recommendations and to assist also in specific legislative draft proposals. They will help put them into a form someone can use.

Commissioner **Deer**. How about the consultants? Do they wish to be paid or not paid? What is the reason for not employing them?

Mr. **Adams**. They do not wish to be employed or paid. They have made a number of assistances to Indian people in the past and they are in ongoing programs where they do receive salaries and so they do engage in a number of pro bono type activities.

Commissioner **Deer**. One of the concerns we all have is sufficient documentation for the conclusions. Could you summarize for us the sources for your conclusions and are you satisfied this will be sufficient documentation for your recommendations?

Mr. ADAMS. We are satisfied every conclusion we submit will be fully supported by full documentation, and we have not been trying to win any tonnage awards, but we probably will as far as bulk from every period in history including Government actions over the past several years. The problem is too massive of documentation, like on water rights——

Chairman ABOUREZK. May I interrupt a minute. What the Commissioner is getting at is a matter of prime concern and I am glad she asked the question.

When we take any recommendations that this Commission comes up with to the floor of the Senate or the House to pass the bill, we are going to have to have the allegations backed up with facts. That is the only thing we really need to know. Do you have it there for us?

Mr. ADAMS. Except where I was noting earlier, I have not received those things in the mail. We will have documentation.

One of the items that has been sent to us—that has not been received, that has reached the Commission offices but has not reached us on the task force—relates to, in one instance, organized crime in the Southwest.

Perhaps we might better be left without that information because I see reporters are being blown out of their cars for looking at the same issue.

The National Indian Youth Council indicated they had sent a number of documents relating to this issue to us. We have not received them, even though it has been logged in as having been received at Commission offices.

Commissioner DEER. Again, I would like to address the importance of this. I have been to a number of hearings and in my personal opinion, I don't feel they were structured and organized to give us the factual kinds of information and documentation that we would need.

If I were the person looking at these reports and these reports were based on the hearings, one would have to question some of these documentations.

For example, you have talked here about $2 billion authorization for 5 years. How did you arrive at this figure and what documentation can support this figure?

Mr. ADAMS. There are a number of documents relating to what is happening to the existing budget. How many dollars go to Indians, and how many Indians are being served. These are not items that have been picked up from individual witnesses at hearings. There are very few individual witnesses who would try to describe a national budget within a time period for themselves and for everybody else.

We are reviewing the service delivery information. We have put together documents we have pulled out of the Department of Interior over the past several years; and we think we will have a costing out of our recommendation.

Commissioner WHITECROW. Mr. Chairman, I have had about a week to review a lot of these reports. I have tried to go through yours because I think your particular report is going to have a great responsibility in the entire Commission report.

As an Indian—who for some 47 years has lived under the blanket of being what we have been told all of our many years that we are a ward of the United States and that we are, in effect, subject to the rules and interpretations of one particular department of the Government—I was very interested in your approach to the subject of sovereignty, insofar as the trust responsibilities of the Federal Government are concerned.

Can you tell me at the present time, whether or not your task force has gotten into the subject of sovereignty and what type of sovereignty or what quantity of sovereignty do you see coming out of your task force? Are you recommending a return of this form of sovereignty to the tribes?

Mr. **Adams**. As a primary base, we have reviewed colonial treaties and relationships that existed between Indian tribes and the governments of England, Spain, France, and the Netherlands.

We have reviewed how that relationship developed to see what the character of sovereignty for Indian tribes was at the time the United States came into being.

The best expressions of that character of sovereignty, we find, are in the volumes, the Law of Nations by Emmanuel Fitel and these are the authorities John Marshall looked to in deciding the first Indian cases. These are the authorities that Thomas Jefferson and John Adams and George Washington looked to in trying to structure just what the relationship with tribes would be.

So we are beginning at that point, to see just what the character of sovereignty was acknowledged or recognized for Indian tribes at the beginning of the United States, and looking to the principles involved in the initial relationship, say, as opposed to going to the 1936–38 Solicitor's opinion—the Mericle opinion—on what are the rights of self-government.

We are going back to the base point to see what were the principles of self-government, the principle of relationship in the beginning of the relationship with the United States.

We do find in our analysis that the basic relationship is one of between sovereign entities or between two governments, rather than, say, the United States to individual Indians and the trust relationship initially was acknowledged to be more in the form of a protectorate relationship between nations, rather than an all-consuming power vested in the United States, to control all elements of Indian existence for Indian's benefits.

Then we reviewed the end of treatymaking in seeing what was the basis for any treatymaking and what was the effect of that 1871 act on Indian treatymaking. We have a tentative judgment that although the 1871 act was a restriction that the United States could impose upon itself to stop recognizing tribes as independent nations who might be contracted by treaty, but that act did not create new powers for the United States to legislate completely over Indians.

Commissioner **Whitecrow**. In your comments here you brought up Justice Marshall's opinion that Indian tribes might best be denominated as being domestic, dependent nations.

As a domestic, dependent nation, I can see a possibility of return of sovereignty to some extent, to some of these dependent nations.

However, it does worry me when Dr. Blue Spruce, at Talequah, Okla., said the Office of American Indian programs had identified over 800 Indian tribes with populations from 2 through 90,000

That particular statement really gave me some concern. How do we return any form of sovereignty to a domestic, dependent nation with a population of two.

Mr. ADAMS. We are not asserting that domestic, dependent nations exist, irrespective of the factual situations. When Justice Marshall was speaking in the 1830's, there had been, at that point, some tribes who were more or less regarded as extinct because there were only a handful of people left and they were not categorized in the same way Justice Marshall categorized the Cherokees.

Congressman YATES. We were discussing before, the definition of an Indian. Do we have to move into definition of a tribe now? You raised the question of a two-member tribe.

Commissioner WHITECROW. I think we have to face this issue headon as a Commission. I think the Commission's responsibility is to get into the definition of who is an Indian and who is an Indian tribe. I think this is most important from the Commission's standpoint.

Chairman ABOUREZK. I would personally tend to agree with that. I think we have to deal with what is a tribe as well as what is an Indian.

As usual, we are always cramped for time. In order to get this room, because we have votes on both sides today, we have agreed to give it up at 11:30 and come back at 1:30. They have another meeting scheduled in here.

Some of these task forces will take longer than others and Hank will take longer because he gives convoluted answers to every question we ask him.

Mr. ADAMS. That is because in all of the other Commission meetings no one has asked me any questions.

Chairman ABOUREZK. What I would like to do is interrupt Hank right now and ask him to come back later on in the day if anybody has more questions. I want to put Mel Tonasket, chairman of Task Force No. 3, on. He made a request that he be put on early for he has to get back and campaign for reelection and I can understand that. So, we ought to get Mel on and have him finish his business.

Mr. ADAMS. Mel, who are you running against? I am not sure I want to yield.

Commissioner DIAL. Mr. Chairman, while he is coming up, may I make an observation? Do you think it is fair to take so much time with one task force and cut the others short in the end, or do you plan to go on until tomorrow?

Chairman ABOUREZK. We hadn't planned to go until tomorrow. I guess we could.

Commissioner DIAL. If I was coming on at the end and I did not have time, I would resent taking too much time with one task force. That is my opinion.

## STATEMENT OF MEL TONASKET, CHAIRMAN, TASK FORCE NO. 3, ACCOMPANIED BY RUDY RYSER

Mr. TONASKET. I have offered to give my answers in a "yes" or "no" fashion.

Congressman MEEDS. Who would like to begin the questioning?

Congressman YATES. I would like to start this. The title of this task force is "Structure of Indian Affairs" and Hank is talking about doing away with the Bureau of Indian Affairs and organizing a new department. Wouldn't that fall within your task force rather than his?

Mr. TONASKET. I don't know if Mr. Ryser has taken the time to think about that. From our conclusions, it is more beneficial to the Commission to have more than one or two task forces consider the decision, giving more opportunities for alternative solutions.

Congressman MEEDS. Have you coordinated, cooperated, and communicated with Task Force No. 1, with regard to what you are concluding on this subject matter?

Mr. TONASKET. I am surprised we came down to the identical recommendations.

Congressman YATES. Have you read his alleged report?

Mr. TONASKET. I have not, have you?

Mr. RYSER. Yes.

Congressman YATES. Your recommendations are roughly the same as his in doing away with the Bureau of Indian Affairs and establishing a new kind of organization on the Federal level?

Mr. RYSER. Odd as it may seem.

Mr. TONASKET. I think closer than roughly.

Congressman YATES. Closer than roughly?

Mr. TONASKET. Very closely.

Congressman YATES. Isn't it primarily your responsibility to deal with that question?

Mr. TONASKET. I feel so; yes.

Commissioner DEER. I would like to ask you about the Bureau of Indian Affairs Management Study. Why is it so late in being carried out? Are you contemplating indepth interviews with the former Bureau of Indian Affairs Commissioners?

Mr. TONASKET. I will let Mr. Ryser answer that.

Mr. RYSER. The answer to the second question is no. The answer to the first question is that there was a 2-month delay, back in January, that related to a question of how the think is going to be funded.

Then there was a substantial delay in gaining contract acceptance through the committee, partially because the committee simply did not get around to it. We waited until that occurred and when it finally occurred, we proceeded.

Mr. TONASKET. The Commission?

Mr. RYSER. No; Senator Cannon's committee.

Congressman MEEDS. Don't you think discussions with former Bureau of Indian Affairs Commissioners would be a valuable resource source?

Mr. RYSER. The way we have structured the study, is to deal with two major elements.

(1) To answer the question of how policies and determinations are made within the Bureau of Indian Affairs regarding the broad area of budget that affects almost every decision made within the Bureau of Indian Affairs.

(2) We are principally concerned in that study with prior studies to avoid repeating what the Congress may have done, or what the execu-

tive may have done, and determine what has been done up to this point.

We felt if we were to conduct a study without having looked at prior studies in reporting out to Congress what has been done, then we would be in error.

Congressman **Meeds**. You are not answering my question. My question is: Do you not think former heads of Bureau of Indian Affairs would be a good resource source?

Mr. **Ryser**. No.

Congressman **Meeds**. You do not?

Mr. **Ryser**. No.

Commissioner **Deer**. I would like to differ with that.

Congressman **Meeds**. So would I.

Commisisoner **Deer**. I would like to speak. I think there should be serious considerations given to indepth interviews of the former Commissioners. I cannot see how a study of the Bureau of Indian Affairs would not be enhanced by the first-hand observations and experiences of Mr. Nash, Mr. Bennett, Mr. Bruce, and our current Commissioner, Mr. Thompson.

Mr. **Ryser**. All I can say is that it was structured from December in the way it is presently operating and we have not received any suggestion up until this moment, that it should be altered in any way.

If what you are suggesting is we ought to alter it at this point, then certainly the task force must look into doing that.

Congressman **Meeds**. Just speaking for myself, I do not see how you can have studies of BIA management practices without having talked to some of the people who have run BIA.

Whether you agree or disagree with them, they have got to be a valuable resource source, maybe just to find out what they have done wrong.

So, personally, I would suggest that this be done.

Mr. **Tonasket**. If that is the recommendation of the Commission, we can direct whoever is directing or coordinating that study, but when you find somebody with his hand in the honey bucket, you seldom are going to get that individual to admit it, even with the honey dripping off the end of his fingers.

Congressman **Yates**. What does that mean?

Mr. **Tonasket**. That means he has been doing things wrong, even though policy or legislation has been developed for the Bureau to produce a certain resource or project or program and he is not doing it, or he is changing the Bureau's regulations following the legislation you gentlemen produce.

It gets changed around so much that when it gets down to the reservation, we are not getting it. He is very seldom going to admit that.

I doubt if a Commissioner who has seen an area director play one tribe against the other is going to get up and condemn his own people. And those things, for a fact, are happening.

We think—at least it is my personal opinion—we can get a better story from the Indians, the tribal leaders, the tribal governments, who are getting the end result of what the Bureau of Indian Affairs is doing.

Congressman **Yates**. May I ask a question, Mr. Chairman? Excuse me, are you finished?

Congressman **Meeds**. I was going to suggest that to indicate that all former Commissioners of Indian Affairs had their hand in the honey bucket is an assumption I am not prepared to make.

I have personally had some very good conversations with Phileo Nash, with Louis Bruce, and with others whom I feel to have some very good suggestions and valid suggestions about the Federal role in Indian policy.

I think to inherently, as a policy matter, write them off is a shortsighted approach. If that is the policy, it will jaundice my view of your report.

Mr. **Tonasket**. We have given the proposed study plan, made it available for the Commission, for remarks, for recommended changes and that was not given to us in return. If you want to give that to us now, we will do that.

Commissioner **Whitecrow**. In regard to this same issue, Mel, I have talked to a few former Commissioners also, and I firmly believe and think that we ought to touch base with these men and get their thoughts on it.

Some of the comments made to me off-the-cuff and excepting Mr. Bruce—I am not including him in this statement, I have not approached him in this regard—but some of these former men have told me that that particular position within the Interior Department is a position whereby your hands are tied. I think that if this is true, we need to take a look at it if we are going to make any kind of recommendations as far as Federal structure is concerned.

Mr. **Tonasket**. If I might add to that; I was told by an ex-Commissioner—not Commissioner Bruce, but somebody else—and he said I will never go to work again for the Federal Government, particularly in Indian affairs. I have seen so many rotten things going on there that I am not going to tell it until I know I am going to die. Also, it wouldn't do me any good to interview that individual.

Commissioner **Bruce**. We did have a session with your task force, 3 or 4 months ago, when we talked about the whole Federal concept as far as Indians are concerned.

I don't see that specific recommendation in the report.

Mr. **Ryser**. Which specific recommendation?

Commissioner **Bruce**. That the national Indian tribes and intertribal council—that is where we got into a discussion about whether the regions should accept inter-tribal councils. We talked about taking in all of the tribes and whether Congress would accept this as a means for communications with tribes or dealing with tribes, regardless of what it was.

I thought, at that time, we had something going and I am surprised it was not left in the report.

Mr. **Ryser**. If you will refer to page 14 in the quarterly report, you will see we deal with that issue specifically and come to an initial conclusion that says that tribes have indicated to us that they are not prepared to say they should form a confederation, which is, in effect, what we were talking about in the meeting here in Washington and, again, out in Denver.

A political confederation of tribes, many tribes felt that might be something in the future but they felt we ought not recommend to the Congress that it take steps to create that federation. That, in fact, a means ought to be provided the tribes by support of their governments to take the time to develop their own notion of what sort of political confederation ought to exist, if any at all.

So, our preliminary recommendation talks about providing a means to those tribal governments for doing precisely that—functioning as tribal governments so they can decide among themselves what relationships they will have with the U.S. Government.

Commissioner **Bruce.** I notice, also, in here when you say intertribal nationalism, there is a tendency of the Department of Interior to encourage splits. Do you think this actually happens?

Mr. **Ryser.** There is no doubt about it.

Commissioner **Bruce.** Splitting the tribes by making them an intertribal council.

Mr. **Ryser.** There is a great deal of fear in and among Indian tribes that the United States has set about creating political entities that it wishes to deal with at the expense of tribal governments.

Chairman **Abourezk.** For example?

Mr. **Ryser.** For example: The National Tribal Council Association has been talked about a number of times, some regional organizations set up temporarily to deal with a specific organization called by the United States, by the BIA or some collection of agencies. National Council on Indian Opportunity is another example.

In doing so, they are ignoring those tribes and their particular interests. Very often it is argued that by creating such organizations the United States is doing something for the tribes by giving them a forum.

If you, as just a mechanical process, provide $100,000 to 16 select people and say you now represent Indians, the tribal governments and their councils will sit back and say I don't know if they represent me or not. The Northwest Indian Fish Commission is an example of this. The Bureau of Indian Affairs has actively sought to create an instrument it will deal with at the expense of treaty tribes in the *Boldt* decision and the tribes are arguing vehemently among themselves that the United States ought to be dealing directly with them regarding their treaty rights rather than with some unit or some organization created and supported by the United States.

That is why we took the step back and said the United States owes each tribe the right of self-government and must support their governmental functions. In so supporting them financially, however, allow the tribes to evolve their own political institutions which will interface with the U.S. Government.

That is not our final conclusion, but our preliminary conclusion based on our own inquiries with tribes in meetings and conventions.

Commissioner **Bruce.** Isn't it important that you look at the total communication system, we are talking about NTCA and all of these other organizations. I think those were set up originally and I had some small part in the NTCA. Sorry about that gentlemen.

Mr. **Ryser.** You can speak more clearly to it.

Commissioner **Bruce.** When we started NTCA way back, many years ago, we were always looking at who came to our conferences and when we passed resolutions affecting all our tribes we knew when we had an official representative of the tribe sitting there with us.

We used to allow everybody to vote as long as they had associate membership or a membership. That faced me, when I was Commissioner, when we were talking about involvement of tribes officially.

The idea is that the chairmen of the tribes are elected, supposedly, by the membership of the tribe and if you deal with that person and that chairman functions with his membership. It was my idea that you sit down with these people and say, "Look, this is what I want to do, I want to eliminate the area offices," or whatever.

Then, if you don't like it, Mel, you go back to your membership and say, "We had 200 at that meeting and 199 of them voted against it." Then when I came around to meet with them, they would say we don't want it.

That gives the Commissioners some idea of what the thinking is of the membership, not of the chairman. The serious part of the NTCA was they did not fulfill their bylaws or whatever they set up. So, when a person was not elected a chairman, they still stayed on and functioned and then they did not go back to work with their membership and we did not get any involvement at all.

I think that is the key somewhere here. Are we dealing with NTCA or are we dealing with the Association of Indian Affairs or what? Somewhere in this picture there has got to be an important thing so Congress can deal with something that takes in all of the Indian tribes.

Mr. **Ryser.** In the final report we will review all of the variations discussed as far and wide as we have been able to do it, which, in the time we have had to do it, it is not as wide as it ought to be, but it has been one of the limiting factors.

We will detail how political institutions have been involved in the Indian country, but we don't want to place ourselves or the U.S. Government in the position of imposing other political entities on tribal governments or tribes themselves.

The tribes must be allowed the opportunity to evolve those essential institutions that they require to deal with the United States amongst themselves.

Congressman **Yates.** Mr. Chairman, I am interested in your comment on the *Boldt* decision, which is that the chairman of the Interior Appropriations Committee has made extra funds available for the Indian people. Are you saying those rights are not being protected?

Mr. **Ryser.** No; I am not saying that. I am saying the mechanism responsible for representing the interests of those treaty tribes, as the principal instrument, is not an instrument created by the tribes, but created by other kinds of forces.

Many tribes feel that it does not particularly represent their particular interest and they might happen to be a functional personality. There are some human factors involved there, but many I have talked to have argued it is simply not the creation of theirs. They have not got the control.

When you make your appropriations, they hear a fish commission talking about those funds being handled by the fish commission.

Congressman **Yates.** Wasn't the fish commission organized by the tribes?

**Mr. Ryser.** The tribes I talked to say no, it was organized by a number of interested people.

Congressman **Meeds.** What tribes were those?

**Mr. Ryser.** The Nisqually Tribe, the Muckleshoot, and the Quileute Tribe are three tribes I have talked to specifically on those issues. The ones I have talked to have talked about putting themselves out.

Congressman **Yates.** How many tribes involved?

Congressman **Meeds.** In the *Boldt* decision—about 27.

**Mr. Ryser.** There were 27 in all.

Congressman **Yates.** Are you saying you have talked to 3 tribes out of the 30 and came to this conclusion?

**Mr. Ryser.** I am talking about those specific tribes as having raised that as a criticism.

Congressman **Yates.** Let me ask another thing. On recommendation No. 3, and I think there is some justification, you say the present system of band analysis fails.

One of the most important concerns of our work was how to get the views of the tribes themselves on how to get the funds they needed. When we interrogated the outside witnesses, the impression we had was there is a chain of communication that goes from the BIA into each of the tribes.

The tribes are told the amount of money that is available. The appropriations process, as it presently exists, I think compels that the budgetary process makes available so much money for each of the Government agencies and so much for the Bureau of Indian Affairs and the Indian Health Service and so forth.

The question is, admitting the amount of Federal dollars is inadequate for all of the activities that require Federal funding: How do you deal with that?

Your recommendation, as I understand it, is that the budgetary process should start, not with the BIA, or with the Office of Management and Budget, or the Federal Government itself, but ought to start with the Indian tribes themselves.

How do you get a coherent attachment to the entire Federal budget? How is this related to what can only be described as the Federal budgetary process.

I assume you may not have to go through the Office of Management and Budget, but it seems to me you may want to go through in order to get some kind of defined budget, so you know what the budget of the U.S. Government is going to be, including that of Indian people.

**Mr. Tonasket.** It might sound radical in some respects, but I think that is the purpose of the task force, to look at new ideas if they are radical, then so be it, and for making changes, Congress could implement.

Congressman **Yates.** I have no objection to a report that might be designated as radical. My only concern is how it can be worked into what is the budgetary process.

**Mr. Tonasket.** The band analysis, plus the BIA reports to the Congress, really is not telling the truth. The system might be there on paper but I personally have gone to reservations where they knew nothing about the band analysis. They have never been consulted by the Bureau of Indian Affairs on band analysis.

It seems strange, people sitting back there in the Office of Management and Budget know what the needs of Indians are sitting out on the Nevada desert or in Southern California.

What we think has to be done is that technical assistance has to be provided for tribes to develop their own needs and their own priorities.

With the band system, even those tribes consulted by the BIA, are told what the line items are on the budget. They are told what the base figure is in the budget and it is kind of take it or leave it.

It loses a handle on the budget after it leaves the tribal office and the Bureau of Indian Affairs has completely changed the priorities of tribes nationally. This was a prime example of where tribes pushed forth the Indian action team for budgeting on the band analysis when it comes back to Washington, D.C.

According to the Bureau of Indian Affairs in Washington, D.C., it was not a priority and it wasn't listed on the band.

Chairman **Abourezk.** Isn't it true the band analysis encompasses part of a tribal analysis and that is the part picked by the Bureau of Indian Affairs?

Mr. **Tonasket.** Yes; to fit their priorities.

Chairman **Abourezk.** They only take part of the programs, the other parts are done the normal way. The parts they pick to be included in the band analysis. Then the tribes are told by the Bureau of Indian Affairs they must pick their priorities within that small range of programs. Is that correct?

Mr. **Tonasket.** Right.

Chairman **Abourezk.** Is it possible, I think it used to be done this way, for the tribes themselves to make a budget request to the Commission, for the Commissioner then to make that a coherent overall budget and present that to the Appropriations Committee. Is that a feasible alternative?

Mr. **Tonasket.** Let me take you back to the full picture. It looks like our recommendations are going to be coming out to be a new Department of Indian Affairs, with some sort of elective system by the Indian people to select the Secretary or whatever he is going to be called.

I was glad to hear Hank Adams agree there should be a new committee in both Houses, specifically for Indians.

Would it be good to go directly to the Commission that would be outdated for what we planned to represent in the whole picture——

Chairman **Abourezk** I mean to some central authority.

Mr. **Tonasket.** As a transitional time, from the time we make recommendations for legislative changes for the whole picture, maybe what you are suggesting would be good to cut out all of the in-between. It has been unanimous to cut out area offices in the budgetary process and deal directly at the central office level.

Congressman **Yates.** I think it is a very interesting concept but I wonder how you deal with it. He says can you go from the Indian tribes right to the Federal Government's representative on matters of the budget. I am concerned with what the size of the Indian budget is going to be, not that I don't think their needs are great and their entitlement is great.

For example, the Navajo people appeared before my committee and said their health need requirements approximated a total of $242 million. Assuming their tribe presents this under the system you are considering, rather than at the present time, and you go from tribe to tribe to tribe until you have a total budget of all of the Indian tribes, and I would think it would be in the billions.

Do you then go to the Federal representative who says we can't appropriate that much money? How are you going to allocate those funds among the tribes? How would you propose they be distributed among the tribes?

Mr. TONASKET. We are proposing direct negotiations.

Congressman YATES. Between the tribes themselves?

Mr. TONASKET. Between the tribes themselves and hopefully we can bring them together for negotiating teams to negotiate directly with the Congress or whatever committees there are that are going to be set up.

Granted, the requests are going to be more than what the United States is willing to offer, but they will have that opportunity to negotiate, to come to a settlement and set their own priorities for the amount of money, whatever they can agree to.

Congressman YATES. Suppose they cannot agree? Will the Federal representative decide this is as much as you get?

Mr. TONASKET. I guess, looking at it realistically, he will decide, but I think your chances to increase your appropriations would be a lot better than having in-between men set those for you.

Congressman YATES. Suppose the Federal representative has so much money to distribute. Can you start with that and then let the tribes decide how they will distribute that amount?

Mr. TONASKET. I don't know yet. I would not want to have the responsibility of saying yes or no.

Congressman YATES. I think that is a very important question.

Mr. TONASKET. It is. The thing that hits us all the time, if the U.S. Government can spend a billion dollars on an airplane, how can they sit back and watch so many Indians suffer from malnutrition or poor housing or whatever the problems might be.

What has been happening is that the Bureau has been the buffer in between the actual poverty that is out there and the tribes that are really living within those terrible situations don't have the money to come back here and tell you firsthand.

Some don't know how to tell it or present the picture.

Congressman YATES. They are presenting it. We hear those stories. My own committee went $150 million over the budget, most of it for trying to take care of Indian needs for hospitals, schools, and things of that sort. The needs are so great and the monetary equivalent of those things is so great, I don't think you can handle it under your system unless you can get some kind of discipline worked out among the tribes who are willing to cut back when they have to cut back.

Mr. TONASKET. I think they are very well qualified to cut back because that is what they have been doing.

Congressman YATES. But as I understand the system, the Navajos are going to have to say, we need this much but we are willing to let this tribe have it, they have a greater priority than we have.

Mr. TONASKET. I see tribes that are beginning to look at planning themselves down the road. They will be at such and such a level this year and 5 years from now they will be at such and such a level.

I think that can be worked out. It doesn't all have to be at one time. It would be great if it would. It is my personal feeling in talking to mostly the Northwest people I deal with very closely, sure, it is going to cost the Government a lot of money if they are going to do what we want them to do, but it would only cost them that much for a few years, until we come out of that hole we are always stuck in and it would taper down and level off and we could be almost self-supporting and would not need the Federal Government.

Congressman YATES. Is anybody computing what any group says are the reasonable needs of the Indian people?

Mr. TONASKET. It is on that band, the green line of what is the total need, but I don't think it ever gets upstairs.

Congressman YATES. Is part of your task force responsibility to total the needs of the Indian people?

Mr. RYSER. That is Task Force No. 7.

Chairman ABOUREZK. I will ask Ernie Stevens to make a comment about that.

Mr. STEVENS. Most of the task forces have been assigned the job of assessing needs. However, to give you an idea of what they have to face, recently the Office of Education let out an RFP for $400,000 to assess educational needs. I just want to point out, our educational task force has approximately $120,000 to do everything. This is not a plea for money.

In another case, Lorraine Ruffing went to Task Force 7 in order to just determine a reasonable way to assess tribal needs. The General Counsel's Office has recently done a thing with White Mountain that cost them $450,000 to develop a formula of how you assess needs.

Like Peter says, they are charged with doing this and they can take a pretty good shot at it, but after the Meriam report there was an assessment of needs of some sort. I am just saying the kind of job it takes.

Chairman ABOUREZK. Let the Commission members finish up their questions as long as we stay in here, then Jake, will you adjourn it until we come back at 1:30?

Mr. TONASKET. I would like to request that I let Mr. Ryser answer any questions. I am 15 minutes late now.

Chairman ABOUREZK. All right, Mel. Jake will adjourn and the hearings will resume at 1:30 in this room.

Commissioner WHITECROW. My question is on page 17 of your report. Subject 5, with your recommendation that Congress create an independent executive oversight office of Indian affairs. With this kind of recommendation and then you look back at page 1, your summary, whereby you state:

> The Congress has remained faithful to the principle of protecting Indian rights, land, and property and preventing wrongs being done to the Indians.

I think this is conflicting comments because as we are developing information that is being funneled to us through the various research, we are finding the executive branch has not been faithful and if I were a Congressman I would be very happy to read a statement such as this, that the Congress has remained faithful.

Inasmuch as I am not a Congressman and I read a statement like this, and I realize the executive branch of the Government should be responsible to the Congress. How can we leave a statement like this in our report, that states Congress has been faithful but the executive branch has not?

In my opinion, the Congress has been unfaithful in their responsibilities in protecting Indian rights, because they should be overriding as an oversight committee on the relationship of the administration of the executive branch in total.

Mr. **Ryser.** Commissioner Whitecrow, if I may respond. You have given the reason why we are talking about an executive oversight office separate from the executive branch. We are attempting to make a separation between the policies of Congress, that is, the pronounced principles on which they base major legislation, and the actions of Congress and its functions related to the executive branch.

We are also separating out the actions of the executive branch as it relates back to the Congress. The statement that Congress has been faithful to the principles announced in the "Northwest Ordinance" in 1787 requires elaboration and it will be elaborated on in the final report.

For the sake of this discussion, it relates to about six major pieces of legislation that represent policy statements in our interpretations set out by Congress. That is, if you combine the sum total of the positions announced in the "Northwest Ordinance," the Trade and Intercourse Act of 1884, the Dawes Act of 1887, and the Indian Reorganization Act, and the Indian Self-determination Act of 1975, our view is that you can read clearly the two principles that stand out, that constitute the policy of the U.S. Congress: (1) That lands shall not be taken from tribes without their consent and, (2) the United States shall promulgate laws, rules, and regulations intended to protect Indians from external encroachment.

Those two principles, I think, function very well to serve as a description of what the U.S. Congress total policy has been over that 189-year period.

Now, it is important in our view to separate out from the policy what the actions of Congress have been. It is clear the principal function of Congress has been with regards to the executive branch, in determining whether or not the executive branch carries out policies through the oversight functions of committees.

In the recent past, the Congress relies upon congressional committees and the GAO for specific research and information. We find that process wholly inadequate. It is not only wholly inadequate for Indians, it is wholly inadequate for the whole United States, in our opinion. But, since we are addressing Indians, we say there must be a means by which violation of congressional intent can be rectified.

The oversight committee approach may give as many as 5 years of lapse in time before a problem can be fully addressed by any committee in Congress through the process of oversight committees.

In our view, there must be an immediate means by which Indians and Congress itself can address itself to a violation of a policy or a position of Congress.

In the case of Public Law 93-638, the intent of Congress was clear that Indian tribes should have control over decisions relating to contracts, for example. The net result of that policy applied through the Bureau of Indian Affairs, was just the opposite as it came out through regulations.

Indeed, Indians ended up having a far more complex way to deal with that than the very simple one outlined in very simple detail in the legislation establishing this process in the first place.

Where is the remedy, we ask ourselves, for an Indian tribe or an Indian individual to solve a problem they see as having come from the executive department. They can go to a committee and say the executive department has failed or is operating inconsistent with the law. That committee will, in due process and in due time, consider that one problem. They will wait, more often than not, for a variety of people to come in and say that is a problem. Meanwhile, that problem is not being solved for that particular tribe, it is not being solved for that particular individual who may have raised the question in the first place. Congress fails to fulfill its obligation that it set out to do in the first place.

Commissioner WHITECROW. That is my point. Don't we see that Congress has failed in its obligation to begin with?

Mr. RYSER. We see that as a mechanical problem rather than a policy problem.

Commissioner WHITECROW. I want to get this portion in the record here. In your recommendation here to create several negotiation teams, on page 16, "authorized to enter into negotiations with private governing bodies," which Congressman Yates was referring to a little bit earlier: Do you see this particular negotiation team to be elected from the tribes or do you see a team that would be appointed to go to the various tribes?

Mr. RYSER. The details of it have not been worked out, but I would suggest what we have been hearing from tribes is that they would like someone who has the authority, perhaps directly from the Congress, maybe a member of the appropriation staff, I don't know, who knows what the budget limitations are, who can come down and have the authority to negotiate up and down a budget and say these are the limits we can go to, these are the kinds of things we can fund, with a staff or whoever is supported by a tribal government and sit down at a council table, saying these are the things we want and Congressmen come in and say these are the things we can provide in terms of money.

Let's see how far we can go straight forward with negotiations without somebody saying these are the rules by which we can give you money. You have to work within that framework. The tribe has to have maximum latitude for budgetary considerations if Congress is indeed serious in saying the tribes ought to reach some level of self-sufficiency.

So, the negotiating team idea, coming from a number of sources, suggests the tribes are in the position of defining those authorities. Congress' part is to define what the limitations are on the ability of the United States to respond.

Commissioner WHITECROW. In your final report you will outline this in detail?

Mr. RYSER. Absolutely.

Commissioner WHITECROW. We see your recommendation coming out on one agency being formed. Are you continuing to provide a vehicle or process whereby all other appropriations for projects such as those programs funded through the Department of Commerce, Department of Labor, Department of Health, Education, and Welfare, are you seeing all of these types of appropriations being funneled through this new agency or will this delivery of services remain intact, those outside the Bureau of Indian Affairs and the Department of Indian Health, for example?

Mr. RYSER. Our initial analysis suggests funds ought to be funded through a single agency if they are to be funneled at all. There are two budget considerations here, two processes we are talking about, but in answer to your question, yes, the indications are through a single agency.

Commissioner WHITECROW. This would entail legislative change to Public Law 93-638 as it is today. It refers only to Indian Health Service and Bureau of Indian Affairs.

Mr. RYSER. It will require change not only in Public Law 93-638 but amendments to about 1,000 statutes.

Commissioner WHITECROW. Those are my questions.

Commissioner DEER. I would like to ask some of the same kind of questions. Are you using consultants? Who are they and what are they doing?

Mr. RYSER. Yes; we have been using principally core consultants. Jack Peterson is one such core consultant we have used extensively. We are using Ed Johnson, who is also a core consultant and we have used Wendell George extensively.

We have one consultant we bought ourselves, Diane Pierce. Then, in a project called historical Indian priorities, 1900–75, we used core consultants, which was essentially a joint task force funded operation. Lee Cook was one such, Diane Pierce was put in there. Carol Wright was another. A man by the name of Agnars Svalbe, I don't know if I put it in the record, but we frequently call on him. Those have been the principal consultants we have used. What was your other question?

Commissioner DEER. What do they do?

Mr. RYSER. Jack Peterson is conducting a full analysis of the impact of the San Juan-Chama project. It is a comparative analysis on the tribes in New Mexico and Colorado.

On the supposed impact relating to Albuquerque and some other towns in New Mexico, as well as considering the question of inverse condemnation, which we believe is a key issue Congress ought to become aware of.

The project, we believe, gives the best example of how Congress has inadvertently acted to condemn Indian resources and land at the suggestion, really, of an executive agency. That is by setting up a project of inverting water, for example.

Congress is later told they have already condemned water rights for a tribe if they set this project up, so Congress is left having done something they obviously did not intend to do. We are keen on that issue, we want to address Congress and discuss with them inverse condemnation and how it affects them.

Commissioner WHITECROW. We are running 35 minutes late. We will adjourn now and reconvene at 1:30 p.m. in this room.

Commissioner DIAL. My question is only 10 seconds.

Commissioner WHITECROW. It might take him 30 minutes to answer.

Commissioner DIAL. I don't think so. I hear many people, and you, speaking of a new agency. How would you serve terminated and nonfederally recognized people?

Mr. **Ryser.** The same way we serve everybody else.

Commissioner **Dial.** That doesn't tell me very much.

Mr. **Ryser.** If we want to do it in the longer term, we are working on a paper that will be a part of the report that deals with the question of eligibility, that is how the U.S. Government relates to a tribe or an individual. As I hear Hank talking about that I am interested that he is doing it as well, but we find it a very important issue when we talk about developing a new agency.

The paper seems to be going in the direction: (1) There must be a specific process whereby the United States recognizes tribes. There is no way that we can tell of a systematic process where that occurs; (2) it is clear in our minds the United States cannot enter into defining who is and who is not an Indian. That is up to the tribes.

Once the United States recognizes a tribe, then the services flow from this agency to the tribe, to those people in some way, shape or form.

Commissioner **Dial.** That is a good point to adjourn on.

Commissioner **Whitecrow.** I will ask you to adjourn. Come back at 1:30; take your books and papers with you. This room will be used.

[Whereupon, at 12:10 p.m., a luncheon recess was taken, to reconvene at 1:30 p.m. this same day.]

## AFTERNOON SESSION

[The Commission meeting was resumed at 1:40 p.m., Senator James Abourezk, presiding.]

Chairman **Abourezk**. Jake, bring us up to date.

Commissioner **Whitecrow**. We had one or two more questions from Commissioner Dial.

Commissioner **Dial**. Really, we were in a rush there at the end. Maybe I should rephrase the last question. What process would you recommend for recognizing nontreaty Indians? Notice I didn't say terminated and nonfederally recognized, but I said Indians who had never signed a treaty.

I will use the Lumbees for an example. The Lumbees have never signed a treaty with the U.S. Government; they have never negotiated a treaty.

Mr. **Ryser**. Our view is that the United States is not to define who is and who is not an Indian. My tribe ought to be able to make their own determinations as to what constitutes a tribe. We will make some recommendations to the tribe for that reason, that they consider developing a process among themselves for recognizing tribes.

There are a couple of things we will suggest. One, that they, perhaps, use as a criteria for determining whether or not there is or is not a tribe, if there is a historical or present operating government after whom or in which there is some loyalty placed by members of the tribe.

That there is a documented, legal, historical way of defining the tribes, if tribes define among themselves who they are and agree among themselves who they are. The U.S. Government has the responsibility to recognize those tribes——

Chairman **Abourezk**. Can I break in on that? There is no question there is a lot of controversy over the Lumbee's situation. What if the tribes did not agree the Lumbees can be defined as a tribe? What would you do in that case? Rather than a subjective definition, is there an objective definition you can come up with?

Mr. **Ryser**. I don't think there is one we have been able to find that can specifically place on people a definition of whether they are one thing or another. The U.S. Government has attempted, by blood quantity, to do that.

Chairman **Abourezk**. That is members of individual tribes, individual members. What consists of a tribe of Native Americans or Indians, whatever they want to call them, wouldn't it be fairly simple to define an Indian tribe as a group of people who live here within the confines of the United States and Alaska at the time the white settlers came here. Would that be a very straightforward definition, an objective definition?

Mr. **Ryser**. Absolutely.

Chairman **Abourezk**. Let me hear from the rest of the Commission.

Commissioner **Whitecrow**. That sounds like a real fine approach to the situation.

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Chairman **Abourezk.** That voids 240 tribes ganging up and saying one tribe is not a tribe.

Commissioner **Dial.** Senator, that is a very good way of putting it.

Mr. **Ryser.** The thing we want to address ourselves to is how tribes come into being and we feel there are some tribes that do not recognize the existence of other tribes, just as the United States does not recognize other countries to deal with them. We think that it ought to be spelled out to tribes to carry out the process, not the similar process it goes through when it tries to deal with political entities.

Commissioner **Whitecrow.** Mr. Chairman, I have one question, if I may, sir. Mr. Ryser, are you approaching the heirship problem of trust lands?

As I recall, on a previous occasion I mentioned to you the method the country of New Zealand approached the heirship and undivided interest of land. Have you had an opportunity to look into that situation yet, to see whether or not there was any semblance between their problems and ours?

Mr. **Ryser.** I have not taken the step to do the comparison or the analysis, but we will be entertaining the issue of heirship, particularly as it relates to a single agency and its relationship to a tribe. Not only ownership of land, but management of land.

Commissioner **Deer.** What kinds of coordination and consultation have you had with other task forces?

Mr. **Ryser.** We have done, I believe, a substantial amount out of necessity, as I think we reported on a number of other occasions. We have spent, initially, time with task forces 1, 2, 4, and 9. We have done discussion type activity with task force 7, but most of our activity with task forces are those I mentioned: task forces 1, 2, 4, and 9.

We have been asked, on numerous occasions, by other task forces to supply materials and we have done that as far as possible.

Commissioner **Deer.** What additional problems do you anticipate now in completing your report?

Mr. **Ryser.** I don't see any major problems, other than making sure one of our last projects is finished. That is one I hoped you might ask me about, historical Indian priorities and policies. It is going to be finished about the middle part of June. What it constitutes is a survey of tribal policies and positions through intertribal organizations and as represented in the Congressional Record for a 75-year period.

We will be basing, and indeed are basing, many of our recommendations on that study as well as other research.

That is the only problem I can foresee right now, making sure we get all of that for people to digest it and it constitutes something close to 10,000 pages.

Commissioner **Dial.** What about your budget?

Mr. **Ryser.** We have been adjusting and moving it around. We can always use more money, as I am sure anybody will tell you, but within the narrow scope we have tried to set out and tried to maintain. We have not always been successful in doing it. I think we have at least sufficient budget, but I am not always right on that kind of thing.

Chairman **Abourezk.** I would like to ask you, Rudy, specifically in your report to provide the Commission with a recommendation for a definition of an Indian tribe, and how you arrived at that recommendation.

Second, I would like to ask you to provide the Commission with a definition of an Indian and how you arrive at that recommendation.

Mr. Ryser. Thank you, I will.

Mr. Stevens. Perhaps they shouldn't be doing the Indian and the tribe. They are not charged with that. Task forces 8 and 10 are charged with that and I suggest they be charged with it, largely because they have to do the Federal administration. Then everybody will be happy, we will have three different recommendations.

Mr. Ryser. We never did get an explanation as to how we got into that business.

Mr. Stevens. You did just now. The Federal administration has to do with all of the programs and logically, we should know who is eligible for those programs. That will be a three-way deal on who is doing it.

Chairman Abourezk. It seems to me we ought to liken this Commission to perhaps a congressional committee and Commission members can be likened to congressional committee members, and the task forces are the staff for that committee, who are charged with going out and doing the research, the leg work, and making the recommendations this Commission can decide upon.

Of course, we have better defined your responsibility than a congressional committee would do. We have broken it up into task forces.

If you feel you are getting out of your specific area and you ought to get into it, maybe you ought to, but first you ought to check with the staff director or members of the Commission to make sure that is it. That is not going too far afield to provide that definition to us.

Do I find any agreement or disagreement from the Commission on that aspect of it? Our job is really to write a final report and we ought to write that report the best way we can. That is what it amounts to.

Mr. Stevens. What I wanted to ask you was in the review and in the oral review, we have come up over and over again and I want to have the answer for the record. Your task force is charged with doing Federal administration and while I know you have the Bureau of Indian Affairs study and all of that, I was wondering how your task force is dealing with the full range of Federal administration. I felt it was not strong enough in Federal administration and was overly bent towards Bureau of Indian Affairs and the trust administration and so on.

Mr. Ryser. This is the question that has been asked on at least four different occasions by members of the Commission, that is why we don't appear to be getting into all of the other Federal domestic assistance programs and we indicated on previous occasions we would be dependent on the study that was being conducted at the University of New Mexico.

Unfortunately, one of the things we would be doing to get into that subject, that project has not come to light. We have, as a part of our study as an independent agency, attempted to bring together all of the statutes from regulations and things the U.S. Government has promulgated over the years that relate to Indian affairs.

When someone asked a little earlier what kind of changes might be made in statutes, I said we estimated about 1,000 amendments that would have to be made if an independent agency were to be made.

As a result, we have not been able to look as carefully at other Federal agencies as we had planned originally to. So, what we are doing is indirectly looking at those other agencies through their regulations. We have had very little contact with those agencies here in Washington. We have attempted, however, to deal with how those agencies deliver services out in the field.

In the course of our hearings, we have asked people from Federal regional councils, State agencies, and other kinds of governmental instruments to attend those hearings and present us with information about how they present or deliver their services. We have not gotten a lot back. I can only say we will be depending a great deal upon secondary information, rather than the primary information we thought we would have for our study, but we will still address it.

Although your comment, Ernie, suggests we have not done as well in our preliminary conclusions and recommendations, we will attempt to deal in greater detail with the other agencies.

We suggest, in our preliminary conclusions, the trust obligation of the United States is a U.S. obligation and not a single agency obligation. That is one way we believe we are going to attempt to deal with other agencies.

The fact that there is a single agency should not diminish any responsibility throughout the U.S. Government to preserve, protect, and guarantee Indian rights and property. Incidentally, that quick phrase is our interpretation of the trust obligation.

Chairman **Abourezk**. Rudy, if you are recommending a new entity to handle Indian affairs, do you envision something like a trust council authority to handle the legal part of the trust responsibility?

Mr. **Ryser**. As we are now looking as a single agency, we believe it must contain legal, legislative, and administrative elements. There is no way you can separate those when you are dealing with Indian affairs.

Chairman **Abourezk**. If you have a trust council concept for the legal part of it, what kind of agency or organization would you have for the legislative part? When you talk about legislation, what does that mean specifically?

Mr. **Ryser**. We are contemplating several optional views of what a single agency might look like. One of those views suggests there might be more than one official overseeing the operation of an agency responsible for Indian affairs. As Mel suggested earlier this morning, we are contemplating the possibility of some electoral process that might consist of a secretary and several other people. We believe Indians ought to be involved in some legislative process.

Right now, it is not going to be some gigantic institution with all tribes. The tribes are saying no, but there ought to be some mechanism of one or more people who are responsible for making recommendations of a legislative nature to the U.S. Congress.

Chairman **Abourezk**. How about budgetary? Would that be the same group of people?

Mr. **Ryser**. Yes.

Chairman **Abourezk**. To me, one of the most important things in creating such a new agency would be to deal around the existing Bureau of Indian Affairs and the bureaucracy contained in that Bureau.

In my view, if you transfer, all you do is create an agency, you change the name, you transfer the bureaucracy from the Bureau of Indian Affairs into the new agency and we might just as well not have started the study.

My question to you, based on that, is: Are you going to take steps to make certain there is no part of the bureaucracy transferred into any new Indian agency?

Mr. **Ryser**. We are very much concerned about that ourselves. We plan to suggest two things. One thing Jake mentioned this morning and that is that we want to suggest to Congress they create a mechanism that has an ongoing role overseeing the executive department particularly during a transitional period.

Second, we view the role of the Civil Service Commission as totally unrelated to what goes on in Indian affairs and we will likely recommend they not have anything to do with the single agency.

Chairman **Abourezk**. There would be no entrenched civil service regulations?

Mr. **Ryser**. Absolutely.

Chairman **Abourezk**. How would you provide for the employees who now work for the Bureau of Indian Affairs? Would you disperse them throughout the Government over a period of time?

Mr. **Ryser**. I am sure we would suggest there be a couple of years period, in the transitional period, in which they could be phased out. I cannot think of a single agency where this could happen overnight. It could happen in a couple of years, but there is no question a transitional phase would have to take place.

Chairman **Abourezk**. Even longer.

If there are no more questions, we thank you very much Rudy.

Task Force No. 2: Is anybody here?

[No response.]

Chairman **Abourezk**. All right, then Task Force 4.

## STATEMENT OF W. SHERWIN BROADHEAD, CHAIRMAN, TASK FORCE NO. 4, ACCOMPANIED BY DON WHARTON

Mr. **Broadhead**. I am Sherwin Broadhead and I have Don Wharton with me, our specialist. This is Federal, State, and tribal jurisdictions.

Chairman **Abourezk**. What have you considered to be the objective of your task force?

Mr. **Broadhead**. To put it simply, it is to clarify a very confused jurisdictional status.

Chairman **Abourezk**. What have you done to achieve that?

Mr. **Broadhead**. We have approached it in two major ways; through legal research and a whole series of hearings, site visits and tribal meetings, to get a handle on the kinds of jurisdiction needs there are.

Chairman **Abourezk**. Will you have the report done in the time designated?

Mr. **Broadhead**. Yes.

Chairman **Abourezk**. When is that?

Mr. **Broadhead**. July 21.

Chairman **Abourezk**. You will have it submitted to the Commission by that date?

Mr. **Broadhead**. Yes.

Chairman **Abourezk.** Will you describe to the Commission, the preliminary conclusions you have reached.

Mr. **Broadhead.** I think the most important single conclusion we have reached regards Public Law 83-280. We finished our hearing process a month or so ago, in those areas where Public Law 83-280 applied and we find that given the background and history itself of Public Law 83-280 will not accomplish the purpose it was set out to do.

We see those purposes, basically outlines, was to provide better protection to people. It has not done that. It has done quite the opposite. What little support there was, pertaining to law enforcement, was withdrawn by the Federal Government and there is no replacement by the States.

In fact, the States that did agree to it, agreed at the State level but there is no concurrent agreement at the county level where the law enforcement and those kind of things really take place. So, people were left without protection.

Added to that, were many, many allegations of discriminatory law enforcement.

Chairman **Abourezk.** Ada, I have to go and vote again: Will you take over?

Mr. **Broadhead.** The other aspect Congress saw at the time of Public Law 83-280 was a step toward termination, and although things have been difficult for tribes in removing a large part of their tribal government and denying them the opportunity to operate it if it has not terminated those tribes. It takes a great deal of tenacity to do that.

The third thing was to cure the Bureau of Indian Affairs involvement. By and large, we find it has not accomplished that. In many instances, it has made the tribes weaker and therefore less able to challenge a Federal administrator of the tribes to act arbitrarily.

We are dealing with the whole question of jurisdiction over non-Indians. We have found that Congress, through a long period of cession laws, taking lands, opening reservations for settlement, the Allotment Act, have created a very difficult situation.

Non-Indians have come on the reservation to live. We have had reports from many non-Indians that they felt the Government wrongly gave them the idea that they were the same there as anywhere else.

They have been critical of the policies that have allowed them to go there and live. The tribes are very resentful of those policies. It creates many hard feelings.

We are going to come up with recommendations which, in many cases, we think must necessarily put the burden back on Congress to do what can be done to eliminate these checkerboard aspects.

We think a cogent case can be made for fragment jurisdiction over non-Indians, but we think more has to be done because just having that happen, that being the law, does not solve the problem for many of the non-Indians who do not feel comfortable in that situation.

We believe the ultimate solution is to restore to the tribes that land so they can have autonomous areas of operation.

Commissioner **Deer.** Will you tell me what consultants you are using and what capacities?

Mr. **Broadhead.** We are using consultants in the area of fish and game to give us a basic rundown of legal developments and some suggested alternatives to present arrangements.

We are using consultants in child welfare to develop statistical information about children and about the other State agency involvement.

We are using consultants in the whole area of tax. However, this is one that is most difficult to get an entire hold on. What we would hope to do is provide guidelines out of our hearings on an historical base and urge additional effort be made in certain aspects of taxation, which, given our time and resources, we could not fully accomplish.

Commissioner **Whitecrow.** Sir, on page 2 of your report, down at the first full paragraph, much is said about removing the State jurisdiction.

Principally here, because State jurisdiction is inconsistent with sovereignty and the failure of States to provide adequate services. If we look at any type of return of jurisdiction to the tribal governments are we simultaneously looking at the jurisdiction over, say, school districts, as an example? Are we looking at return of jurisdiction? What return of jurisdictional processes are we looking at returning to them?

Mr. **Broadhead.** The way we see it, the options in these areas ought to be the tribes and in many cases the tribe has a very good working relationship——

Commissioner **Whitecrow.** Let me clarify my point here. Are we talking about jurisdiction of reservation boundary areas or in, say, recognized treaty areas, or both?

Mr. **Broadhead.** I think in terms of the way you are talking here, you are talking in terms of Public Law 83–280 and that would be the original reservation boundary as they existed prior to Public Law 83–280, or, in the case of Oklahoma, the reservation boundaries as they existed at the end of the treaty period.

Commissioner **Whitecrow.** Then we are talking about a tribe determining what jurisdictional factors they wish to undertake. As an example, I have heard some of these tribal leaders state they are not sure they want to assume any jurisdictional processes and there are other tribes that say, dad-burn-betcha we want to take it all.

How do you perceive arriving at an overall recommendation?

Mr. **Broadhead.** If I might refer to a congressional act, S. 2010, it was largely put together by the National Congress of American Indians, provided a process by which those tribes involved P.L. 83–280 could bite off the chunk they could chew, by resolution, what they felt they could handle at any given time.

That way, you would not be shoving any kind of jurisdiction down any tribes throat that did not want it. You would be dealing with the areas you felt were the trace areas, and it would not prevent the thing that would be difficult for everyone to deal with.

Commissioner **Whitecrow.** Let's take, for example, school districts. If we are looking at return of jurisdiction for school districts and school operations: How are we looking at the financing of these institutions by tribes?

Are we looking at it from the standpoint of building an economic base for the tribes or are we looking at it from the standpoint of giving tribes taxation powers, or are we looking at some sort of joint effort between tribe and State?

Mr. **Broadhead.** You will find in many cases, the Federal Government is already largely financing the school, whether it is a public school or a Federal. We think that obligation should continue. In evidence that we have brought forward, it is part of the trust responsibility, part of the guarantees made in the treaties and by the early legislation.

Some tribes are on their own assuming the extra expense of running their own schools. We think a combination of these kinds of things is what we are involved in. In some cases, people will be perfectly content with the school they have and through the present funding we will be able to deal with that.

Our task force is also looking at the education task force in those areas to come up with recommendations and we have had discussions with them and we will have one before our final report is issued.

Commissioner **Whitecrow.** Would the same answer here apply to the return of law and order to the tribes specifically with retrocession of Public Law 83-280?

Mr. **Broadhead.** I think it has to. You talk about the whole range of law and order aspects—juvenile areas would fall in that. Some tribes have presented evidence to us the State does have the facilities—they do not. They would feel, at least at the outset, fairly weak in assuming that jurisdiction. So, I think the options must be there and they must assume it as they see fit.

Congressman **Meeds.** Let me apologize for not being here. I did not hear what you said about jurisdictions. Could you reiterate to me what you are suggesting with regard to the areas of jurisdiction and the type of jurisdiction you are suggesting here?

Mr. **Broadhead.** Yes; as I pointed out earlier, there are two basic ways to get at this. One is the historical, legal aspect of what is the legal determination of jurisdiction today. That takes in, of course, territorial and the people.

We find there is a good body of law to back up the fact there is jurisdiction over both Indians and non-Indians on the reservations.

Congressman **Meeds.** What is the reservation? What are you talking about when you say a geographic area?

Mr. **Broadhead.** When I addressed the question before, I was talking about the area that is the reservation.

Congressman **Meeds.** The original reservation?

Mr. **Broadhead.** What was left after the land cessions were made—the exterior boundaries—that area the tribe reserved to itself.

Congressman **Meeds.** You are suggesting, in that geographic area, to assert jurisdiction over all people and all things.

Mr. **Broadhead.** We say we believe there is a body of law that supports that as of now.

Congressman **Meeds.** What body of law is that?

Mr. **Broadhead.** Dating back from the original acts of Congress that created the reservation, cession laws——

Congressman **Meeds.** Do you think that will fit in this 20th century world in which we live?

Mr. **Broadhead.** If there is a body of law, that is the law whether it is the 20th or 21st century, that is the situation we are dealing with today.

Congressman **Meeds.** Under that premise, I assume you are aware the Nasqually would have jurisdiction over the city of Tacoma.

Mr. **Broadhead.** The Nasqually, a large part or both.

Congressman **Meeds.** Are you suggesting we establish and enforce those laws for all citizens in Tacoma?

Mr. **Broadhead.** We believe the tribe, if it should assert its present jurisdiction, it could probably have law enforcement authority over people in the city of Tacoma. The present law, as it exists——

Congressman **Meeds.** Are you suggesting that that would be a good way for us, as a Commission, to suggest Indian policy go this direction in the future?

Mr. **Broadhead.** Jurisdictional rights within that tribe. I think there are ways to deal with that situation from then on. I don't suggest we return to the period of the 1900's when Congress acted without involving the tribes in those kinds of decisions.

Congressman **Meeds.** Have you talked with the tribal leaders on this question? For instance, I talked recently with a tribal leader who indicated to me that the last thing he wanted was criminal jurisdiction over non-Indians on his reservation.

Mr. **Broadhead.** We talked to many tribal leaders who said that. That is their option. They have jurisdiction, if they don't exercise it, it does not become an issue.

Congressman **Meeds.** Will the tribal council then be the governing body? Who will establish the rules?

Mr. **Broadhead.** In the instances where tribes have assumed jurisdiction over non-Indians, many tribes have done this and they have done this by implied consent. Anyone entering their reservation comes under their jurisdiction. Tribes have a certain jurisdiction in order to protect their resources in many instances.

Congressman **Meeds.** How would you suggest non-Indians, not members of the tribe—the tribal council, the governing body, whatever it may be—have any input in what the laws, rules, and regulations are on that reservation?

Second, how would they be enforced?

Mr. **Broadhead.** We had a great many witnesses come before our hearing panel who are non-Indians, who found themselves in that kind of a situation.

They impute to Congress and the U.S. Government a tremendous amount of responsibility for having put them in that situation. Some allege they were not given full notice that tribes did have that kind of jurisdiction. They were very upset.

I think, if you go back, that people are presumed to know the law, they move there with the idea they are not going to be represented. I think they have a difficult situation. I think there are some ways out of it that are beyond the scope of our task force. I think there is going to be——

Congressman **Meeds.** I think your task force has the responsibility with regard to making suggestions concerning the parameters of jurisdiction.

Mr. **Broadhead**. Right; we are making suggestions with respect to what the parameters are. However, we are not suggesting or we are not about to suggest rights or protection of rights go along with jurisdiction.

Without the involvement of the tribe itself, we think agreements can be reached here. One tribal leader came before our task force hearing and suggested there was not all that much in having jurisdiction over a huge area that they were not really going to be able to enforce, but they felt they had rights in that area—fishing and hunting rights—without exercising that the other jurisdiction could not be enforced.

He suggested his tribe might be amenable to sit down with Federal, State, and county officials and work out a quid pro quo, where there could be autonomy in a certain area, and other areas the tribe would disclaim its jurisdiction in order to have an autonomous reservation they could manage.

Congressman **Meeds**. Those, whether it was by chicanery of the Federal Government or whatever cause, who happened to be on these reservations, non-Indians, not represented by the tribal council, and who would, under your definition, not have any say in, first of all, on the rules and regulations under which they were to operate and, second, on the enforcement of those rules. You just say tough.

Mr. **Broadhead**. They have a system of government they operate as well. We are not suggesting Congress do away with the current jurisdiction at all where the State has authority in those areas for non-Indians. That has long been a statement in the law.

Congressman **Meeds**. What happens when an Indian or non-Indian is arrested and brought to trial before an Indian court and is told by the tribe he or she is not entitled to legal counsel? They are tried as citizens of the United States, Indian or non-Indian, to invoke the sixth amendment.

Mr. **Broadhead**. Under the 1968 Indian Civil Rights Act they would have the right to counsel to be paid for. That is the most recent act of Congress along those lines.

Congressman **Meeds**. You are aware of the most recent district court case in the State of Washington? The full force and effect of the sixth amendment does not apply under the Indian bill of rights in which a tribe refused counsel to a person, which was upheld by the district court.

Mr. **Broadhead**. Right; the Indian bill of rights, the so-called Indian bill of rights, the Indian Civil Rights Act, is quite distinct from the Constitution right here.

Congressman **Meeds**. Do you think that is right—not right, that is a relative word—but do you think that is correct?

Mr. **Broadhead**. I believe it is a correct statement in the law; yes.

Congressman **Meeds**. That a person may be entitled to full force and effect of the Bill of Rights as long as he is not on an Indian reservation?

Mr. **Broadhead**. An Indian reservation. Senator Ervin's committee acted, as you remember, to pass the legislative enactments which guaranteed to those persons under the jurisdiction of Indian tribes, a certain protection of due process and so on.

Congressman **Meeds**. Which I just told you the court has ruled did not carry the full force and effect of the sixth amendment.

Mr. **Broadhead**. They did not adopt the amendments to their constitution. That could only be done by constitutional process, an amendment to the Constitution. They did adopt a legislative enactment that spelled out there was a right to counsel if paid for by the defendant.

Congressman **Meeds**. That case held they were not entitled to it.

Mr. **Broadhead**. Under the circumstances.

Congressman **Meeds**. Under those circumstances, yes. I will say I appreciate your view, but as a member of this Commission, I would have very great difficulty in approving anything which extended the full criminal and civil jurisdiction to original or even substantially altered reservation boundaries over Indians and non-Indians alike. I don't think it is the best thing down the road for Indians either.

Mr. **Broadhead**. We were not suggesting you approve such a thing. We were merely suggesting that is the law. We were not suggesting taking those rights from Indians without a process that involved that particular tribe in an agreement or some sort of situation. Whether, in the long run, it is good for Indians or non-Indians—I agree with you, I think there is a long term problem there. I think our suggestions will be, and I think responsibility has got to be, to put it back with the Federal Government and Congress which created this situation in the first place.

Mr. Meeds, I can remember before you were chairman of that particular committee—you were on before Senator Abourezk was chairman of the Senate committee—many Indian tribes coming and saying they have a judgment fund or a small fund and they say we want to buy land, we want to buy this land that allottees are being forced to sell because they cannot afford to still own it, and the Congressman sitting back and saying what do they need to buy land for, what they need is jobs. We see now what they wanted to buy land for was to avert this very situation we are talking about and it is a critical one.

Congressman **Meeds**. This is probably the toughest question we face, but I can think of no quicker way to provoke absolute, outright, total confrontation between the Indians and non-Indians than following that suggestion.

Mr. **Broadhead**. Which suggestion?

Congressman **Meeds**. The suggestion of full jurisdiction——

Mr. **Broadhead**. We are suggesting that is the law. The most recent court case has said that is the law.

Congressman **Meeds**. We might differ on that.

Mr. **Broadhead**. All right.

Congressman **Meeds**. If that is the case, of enforcing that as you state, it would seem to me a very quick way to bring about total confrontation.

Mr. **Broadhead**. With non-Indians and I can tell you why. One thing our hearings have borne out, if nothing else, and that is the abysmal ignorance of the people living in or near Indian reservations who are non-Indians about the history of their own area.

I found one prosecuting attorney who had not read the treaty that the Indians are under in the very area he is operating in. He was not aware of a constitutional disclaimer of his own State disclaiming any jurisdiction in Indian affairs.

Those kinds of things cannot be corrected merely by saying you wish they would go away. We think there has to be an effort made in that area in educating non-Indians to what the rights of Indians are. I think that is far superior. We wish it were this way so we could pass an act that is that way—property rights and other rights.

I don't think that will happen. I think the only way this will be resolved is by a process of people sitting down together in good faith, facing the issue that this group has something to gain, and this group has something to gain, and let's bring them together and talk about it.

For longterm living together as neighbors, that is the way it has to be.

Congressman **Meeds**. I hope that can be worked out.

Commissioner **Whitecrow**. In reviewing your report, Mr. Broadhead, I was thinking about the same issue Congressman Meeds brought to light. Looking back at my notes, one of my comments, the whole issue of non-Indian position on Indian jurisdiction concerning the non-Indian, return of legal and civil jurisdiction, also fully understanding the majority of the American people are not even cognizant of what has happened in the history of Indian affairs in relationship to the Congress, the Federal Government, the State government, county government and local political forces, the way they have played hob with the American Indian.

It is very apparent what you state here is the law of the land today, but the tribes do have semblances or forms of jurisdiction, even though they may be today out in left field, they are still legally there.

If they are legally there and if it is the law of the land and if we are going to be law-abiding citizens, then whatever the law of the land is, that is the way we should function.

If that is not the law of the land or it is the law of the land and we break it, then whomever is breaking the law should stand on his own merits as far as that is concerned.

If we have discovered this is one of the great injustices and inequities we have had insofar as dealing with American Indians, I think it is our responsibility as a Commission to bring this out.

If it brings an educational program, I think perhaps you and our Educational Task Force should come up with some sort of educational program.

I have traveled considerably since I have been on this Commission and I have visited and talked with a great many Indians and non-Indians. I have heard a lot of non-Indians say the American Indian is the most mistreated race in this country and they all realize the injustices that have been done to them.

Everyone I talked to said, "Great, go after it and let's correct these injustices and we will support it." I believe we can get the American people to support this. If it is the law of the land, I think we need to bring it to the attention of the American people.

Educational programs should definitely be implemented to make sure we don't have this revolution confrontation type situation.

Mr. **Broadhead**. I can only agree. I think the research work done by this Commission in determining what the policies have been and what the legal status is, is a very important aspect of this whole educational process.

Part of the problem of the people who don't have the facts is misinformation. By straightening out the record, once and for all in many of these areas, perhaps that can be a new kind of enlightenment, if we can find out a process to get it to people.

Commissioner **Bruce.** I agree with you in the negotiation process but I think you know it did not work out with the Navajo and the Hopi.

Mr. **Broadhead.** That was a different kind of situation. It was a situation created over a long period of time. There were really no solutions that were going to work for the people and the tribes could not resolve it.

I think there are solutions to these problems here in the negotiation process. I think the big concern I have about any such process is that the Congress has the responsibility to assure that both parties and particularly Indians, that they are negotiating from a position as equals; that the treaties were negotiated and nobody can say they were not equals.

I think it is possible today, in fact, I know it is, for many tribes to sit down and as far as knowledge is concerned, they are better than equal. But there has to be assurance this is a freeflowing process; that some person is not going to take action if they don't agree.

They have got to sit down and say, this is best for us and the other party say this is best for us. If they don't agree, they keep hashing it, it does not fly up to somebody else.

What you see in history, in many of these cases, there may have been an attempt from time to time for Indians to sit down and agree, but the minute they did not agree, some of the non-Indians would call all their congressional representatives and there would be an act of Congress that would preclude that. I think we have to avoid that.

Commissioner **Bruce.** You had a lot of hearings?

Mr. **Broadhead.** Yes.

Commissioner **Bruce.** Were you satisfied with those expensewise, also?

Mr. **Broadhead.** Yes. I think they overall justified the expense. In certain instances we were disappointed. In travel participation we were disappointed that the States did not come forward and present their cases. Many tribes went beyond all expectations.

Overall, I think it was worth it. I think it is the only way you can get any kind of reading from people on a serious question like this.

Commissioner **Bruce.** You have numerous complaints. Can you tell us a little bit about those?

Mr. **Broadhead.** It is a very volatile situation. We went out and held hearings, and there were Indians who were not satisfied because we asked them tough questions. There were non-Indians who were disturbed about it. They reacted.

Many of these areas have never had such a hearing before. When we first go in there, people are going to vent their spleens and say what is on their mind. I am going to listen, but I am also going to ask them questions. When you do, you sometimes get a bad reaction.

We are quite well informed on some of the issues. We asked them questions nobody had ever asked them before and we were charged with bias in certain instances—either one way or the other.

My point is with the Senate and House, they have the same problem, they have the same responsibilities.

Commissioner **Whitecrow**. For the benefit of the rest of the Commissioners I would like to state this. I did attend those task force hearings in the State of Oklahoma. As a result of those hearings, we now have a lot of tribal leaders and a lot of individual Indians in the State of Oklahoma who are beginning to realize their tribe does have some authority and some responsibilities that maybe they never realized they had before.

It is bringing about a great deal more interest in tribal politics and tribal government. Whereas before, they took for granted the State had total jurisdiction.

Commissioner **Deer**. What problems will you have now in completing your report?

Mr. **Broadhead**. Quite a massive problem. It will go into volumes of testimony. We have it indexed and so on. We have been doing it as an ongoing process, laying that in with the historical and legal research done not only by our task force but by task force 1 and task force 2 has played quite a role in this.

Our problem will be getting it down in readable form and bringing forth the points we have documented.

Commissioner **Deer**. What task forces have you worked with besides 1 and 2?

Mr. **Broadhead**. We worked closely with task forces 3 and 9—otherwise there would be a great deal of interchange of meanings—discussing various aspects of what we should emphasize and what they were going to emphasize, so there would be a minimum of overlap.

Congressman **Meeds**. Mr. Chairman, I would like to ask a question. I will ask Sherwin and then I won't ask the other task forces.

How much trouble would it be for you to answer in writing some questions about how many consultants you have, how many hours they work, things like that? Would that be too difficult for you? I assume you have records from which you can get that information.

Mr. **Wharton**. Most of those things, yes. We have not kept track of the number of hours we have spent coordinating or discussing different issues with other task forces or trying to identify whether all of the areas have been covered so we can make sure there are no gaps.

Congressman **Meeds**. You know how many hours your consultants have spent? I assume they are retained on an hourly basis.

Mr. **Wharton**. That is correct.

Congressman **Meeds**. You would know where you have traveled and when and how many of the task force people are on full pay, who are part time, and things like that?

Mr. **Wharton**. I would be very resistant to spending the little time we have left, for the large job we have, doing that. That would take a great deal of time. The information is available but I would be resistant to spending our time doing that.

Congressman **Meeds**. Is that information available to the core staff?

Mr. **Wharton**. It is.

Congressman **Meeds**. They could answer these questions as easily as you?

Mr. **Wharton**. Yes.

Congressman **Meeds**. They know who your consultants are, how much they are being paid, and so forth?

Mr. **Wharton**. Yes.

Chairman **Abourezk**. What was your question, Lloyd?

Congressman **Meeds**. It is obviously going to take too long to ask each of the task forces some of the things I wanted to know.

Chairman **Abourezk**. I think we have what you want.

Congressman **Meeds**. I would like to know: How many consultants; who they are; how much they are being paid; how long they have been working; how many of the task force members are working full time; how many are working part time; and a number of things such as that.

Chairman **Abourezk**. We have that all compiled.

Congressman **Meeds**. I will present the question.

Mr. **Broadhead**. Is there a question about our use of time and travel or consultants?

Congressman **Meeds**. I have no specific questions.

Mr. **Broadhead**. I have no problem justifying everything we have done. We think our product will further testify.

Congressman **Meeds**. You will have no touble completing your report on time?

Mr. **Broadhead**. No.

Commissioner **Deer**. Mr. Chairman, I also attended the task force hearing in our area and presented testimony in behalf of my tribe. I would like to ask, for the record, again about the documentation of the neglect and problems the Department of Justice has caused Indian tribes.

Have you come up with specific questions, issues——

Mr. **Broadhead**. Obviously, we did not get full representation from your area and some of the questions that obviously exist were not raised. Those that were raised were obviously beyond the scope of what we were able to trace and document.

We picked up those we think are representative and we are going into those in some depth, enough depth to show it has not been brought out.

Another thing we found is the Federal Government has not fulfilled its responsibility in terms of protected jurisdictions of tribes. That is very well documented in some of those cases and further documentation we are following up on.

Chairman **Abourezk**. Any further questions? If not, thank you very much. I will call task force No. 2.

## STATEMENT OF ALAN PARKER, MEMBER, TASK FORCE NO. 2

Mr. **Parker**. I am Alan Parker. I am a member of task force No. 2. I am aware you made a preliminary statement of not requesting opening statements.

As the Commissioners are well aware, the chairman of our task force, Wilbur Atcitty, was killed in a car accident on May 6 of this year.

Jerry Flute, myself, and other task force members would like to state for the record that Mr. Atcitty provided substantive leadership and direction to our task force while he was with us. He made a substantial contribution to the work of the Commission and we would like to simply state that for the record we will miss a colleague and a friend.

I am prepared to answer any questions.

Chairman **Abourezk**. Do you have the task force specialist with you today?

Mr. **Parker**. No; the specialist is in Phoenix on hearings conducted yesterday.

Chairman **Abourezk**. What is the date for final submission of your report?

Mr. **Parker**. The report is due July 21.

Chairman **Abourezk**. Will you have that to the Commission on or before July 21?

Mr. **Parker**. I am positive we will.

Chairman **Abourezk**. What is the objective of your task force?

Mr. **Parker**. The question can be answered on several levels, but the first level I interpret to be an identification of our objective. It is primarily the ways in which Federal policy, as it presently exists, and as it presently is administered by the Federal Government, operates to strengthen tribal government and the way in which it can be improved to strengthen tribal government; identify ways in which the existing Federal policy and law operates or the limits and obstacles on the effective and necessary travel by Indian tribes.

The second objective is to identify the way tribal governments can be strengthened and enhance the individual rights on tribal members.

Chairman **Abourezk**. Do you have any preliminary conclusions how that can be done?

Mr. **Parker**. We have a whole set of preliminary conclusions. We have identified a major problem as the present Federal law and policy insofar as it can be analyzed. There is a conflict and confusion on the part of the Federal Government regarding the political status of Indian tribes.

We feel that one of the major objectives and one of the major goals of the task force would be to urge that the status of tribal governments be corrected. We would come out with a clear statement, a definition, on the relationship between the Federal Government and Indian tribes—which would include the political status of Indian tribal governments which would be commensurate with the views of Indian people throughout the country.

The primary vehicle for that objective would be the Indian Reorganization Act of 1934. As we have reviewed Federal law and article 10, it is apparent that until the Indian Reorganization Act of 1934 the Federal Government, through the Congress, had never attempted to really state the policy for its tribal governments.

Things like the Allotment Act, the Intercourse Acts, a whole series of acts preceding the Indian Reorganization Act; had never adequately stated what the Federal policy was for its tribal governments.

In a sense, they recognize an inherent right of the tribe itself to recognize its powers to govern itself. That would be a primary objective which we would try to accomplish using the Indian Reorganization Act as a tool.

As we point out in our reports, and as will be clear in our final report, we found the Indian Reorganization Act was an imperfect statement of what the Federal policy should be toward tribal governments.

It was viewed as an assimilation device. The Allotment Act was an example of forced assimilation by the Federal Government. We forced tribes to break up their communal land holdings, forced tribes not to rely on the tribal government as an expression of integrity of the tribe as a unit.

The Indian Reorganization Act expressly ended the Allotment Act and ended the allotment policy, but it was an imperfect expression of Federal policy because it still contained overtones.

From the testimony of Commissioner Collier and other witnesses on that act, it was clear they viewed it as a means to help tribes become democratic units of government, which would then lead to assimilation and we failed.

It is clear Indian people think their tribal governments are no passing phenomenon, they are here to stay, and it is incumbent upon the Federal Government to recognize they have a permanent right to political existence.

To that extent, we would amend the Indian Reorganization Act. There are other amendments to the act in the nature of housekeeping type of things we are proposing.

In addition to the statutes creating the Federal domestic assistance programs which overlook and in some cases simply define the nature of the tribal government, or the rule of the tribal government and the way they can participate in these kinds of programs, a way which is in conflict or inconsistent with the tribal government as a true unit of local government to participate in these things with other local governments in the country.

We don't have at this time, but by the time we come up with our recommendations, we are aiming for something in the nature of kind of a catch-all enabling statute which would address all these Federal domestic assistance programs and insofar as there is an imperfect definition of the relationship of tribal government to these programs, they should be clarified and applied across the board. Does that answer your question?

Chairman **Abourezk**. Reasonably.

Congressman **Meeds**. Alan, do you think most tribal governments are relatively representative of their tribes?

Mr. **Parker**. In the sense the individual rights of the members are protected. Is that your question?

Congressman **Meeds**. Yes.

Mr. **Parker**. Yes; I think most are. I think we could document that with our research. There are some that are not—we would not deny that.

Congressman **Meeds**. Did you find some instances where people actually had no say in the selection of their leaders?

Mr. **Parker**. The Pueblos in New Mexico are theocracies—people don't vote for their members.

Congressman **Meeds**. That is what I had in mind. They do not have a free choice in the selection of their leaders.

Mr. **Parker**. Let me refer to something that is identified in the first part of our report—the power to create and define the nature of the government—which is an inherent power of tribes, recognized and well embodied in Federal law. Part of that policy—if you define the policy on the part of the Federal Government—would be to recognize the power of the tribe, the tribes and their governments, and how they see their governments—which could be in ways which will not always be consistent with Anglosociety ways.

Congressman MEEDS. Maybe I would agree with you and maybe I do anyhow, I don't know. In addition to that, the members of the Pueblo Tribe are American citizens under which they have certain rights.

What happens if they want to assert those rights as American citizens, which would, among other things, give them certain rights that they don't enjoy under a theocracy?

Mr. PARKER. If they wish to assert those rights against the tribal government, their rights are defined and protected by the Indian Rights Act. This leads to another issue, which we will be getting into in our report.

The Indian Civil Rights Act has been interpreted by the Federal courts in inconsistent ways. What I mean is: A Federal judge in looking at a complaint brought by an individual tribal member will not always respect the intent of that act.

I think the Federal courts in determining the intent of the Indian Civil Rights Act would look to a tribal standard or due process or equal protection in order to define that individual's rights as opposed to looking at standards which are embodied in U.S. constitutional law.

I think the individual's rights, then, are protected insofar as they are defined against the background of the tribal standard—the tribal sense of what is right and what is just.

Congressman MEEDS. I am not aware of any case on this issue. But what if, in addition to tribal rights, the individual asserted rights as an American citizen?

Mr. PARKER. I think the Federal law is clear. His rights are found in the Indian Civil Rights Act and in the tribes own sense of law. If he defined his rights as an American citizen, or uncovered outside the scope of the Indian Civil Rights Act and outside the scope of tribal law, we simply have to acknowledge he has no means of enforcing those rights, which are not recognized as rights under law.

Congressman MEEDS. Don't you think that would give rise to a very good allegation of lack of equal protection of the laws?

Mr. PARKER. That issue has been squarely addressed by the Federal courts in interpreting the Indian Civil Rights Act today.

Congressman MEEDS. What case is that?

Mr. PARKER. It is a case coming out of your part of the country.

Congressman MEEDS. The ninth circuit court?

Mr. PARKER. I am not sure it went to the ninth circuit.

Congressman MEEDS. Is this the one I referred to earlier, the right to counsel, the sixth amendment case?

Mr. PARKER. I am aware of that case, but I was referring to a different case several years ago, not this one case. I think it has been defined in other cases; certainly, if you would like, I would try and respond to you at a later date on that issue.

Congressman MEEDS. I had serious reservations in establishing tribal government. You can establish any kind of tribal government which will not be ultimately subject to very severe attack on the basis of a lack of equal protection, unless it is truly a democratic form of government which carries with it not only the rights and heritage of Indian law but also which will measure up to the equal protection of the laws under the U.S. Constitution as it applies to the American citizen.

Mr. PARKER. As I remember the analogy used when it is analyzed as to why or how, under Federal law: An individual Indian does not have all the rights as an American citizen as against the rights of the Federal Government and the rights of non-Indians who might be under the jurisdiction of the tribe. The analogy used is the status of resident aliens in the United States.

Federal constitutional law does not find that inconsistent with their general theory of law—that resident aliens do not have the same rights.

Congressman MEEDS. But resident aliens are not American citizens, but that does not prevent you from using the analogy. I hope you will address that question, I have mixed emotions in this area.

Two more quick questions: Have you had what you consider to be adequate cooperation and help from the core staff?

Mr. PARKER. In my experience; yes.

Congressman MEEDS. Have you used any of the specialists assigned to the Commission rather than your own specialists?

Mr. PARKER. We have, and the first person that comes to my mind is Gil Hall, the attorney. He has helped me on a number of occasions. We have also called upon others.

Congressman MEEDS. Could you give us a horseback guess as to how many hours you have used the core staff as specialists?

Mr. PARKER. A sum total of perhaps 2 or 3 weeks worth of work.

Congressman MEEDS. Do you feel you have had adequate cooperation from Federal agencies?

Mr. PARKER. Yes; we had an experience similar to the one that Mr. Adams elaborated on this morning. We have not felt it necessary to come to a confrontation with any Federal officials. We have asked for help, and while there has been some foot dragging on their part, we have other means of getting the information we needed.

We have had, informally, some very productive sessions with Reid Chambers, and some of the attorneys in his office. Yesterday I had Commissioner Thompson spend a couple of hours with me in discussing issues I was interested in.

Some of the other task forces may have had other experiences, but speaking for ours, we have not had serious problems.

Congressman MEEDS. Thank you, and I want to commend you for your report. I think it is a very good one.

Chairman ABOUREZK. Are there other questions?

Commissioner WHITECROW. In regard to tribal government and its jurisdiction, I am assuming you have cross-referenced with task force 4 in jurisdictional process. Have you given any thought to correlating tribal jurisdictional areas in regard to military reservation areas and military law, as regards to tribal law and that correlation or that analogy between military law and State law within a State where you have a military reservation?

Mr. PARKER. The thing that comes to mind immediately is the Assimilated Crimes Act contained in the United States Code. Just briefly that law provides that if you have a Federal reservation of any kind—military, national parks, Indian country—where there is a vacuum in the Federal law, the Federal authorities are empowered to employ State Law.

It would be exercised by Federal officials but it would be State law. Historically, as the courts have interpreted the Assimilated Crimes Act, they have used State law on several occasions on Indian reservations to prosecute for offenses.

That will be an issue we intend to address. I think it is inconsistent. The act was intended for situations where there is a vacuum in law. When you speak of Indian country, there is no vacuum, there is Federal law, which is overriding, and then there is tribal law.

Commissioner WHITECROW. Are we allowing, in that particular instance, State law to override Federal law?

Mr. PARKER. No; by definition, State law would be used only when there is no applicable Federal law.

Commissioner WHITECROW. But as I understand the Assimilated Crimes Act, the Federal authorities only enforce the State law in the event the State authorities fail to do so. Is that correct?

Chairman ABOUREZK. No.

Mr. PARKER. No.

Chairman ABOUREZK. If there is not a Federal statute covering that offense, then they use the State statute.

Commissioner WHITECROW. Let me use, then, an example of something I have been interested in for several years: Operating a parimutual horserace operation within a tribal reservation, or Indian country, which would be contrary to a State statute. I have been informed that in the event the State failed to prosecute, the Federal authorities would prosecute. Can you give me some analogy on this?

Mr. PARKER. My understanding of the law—we are getting into some technical points of Federal jurisdictional law—is, if you are talking about Indian country, the State only has authority to enforce those laws; for example, gambling ordinances, if there is a Federal law providing for State authority—Public Law 280, Oklahoma, and so on.

Federal authorities will not enforce antigambling ordinances where there is a Federal law. I am getting involved in something else. There is a Federal statute prohibiting gambling by mechanical devices on all Federal reservations. That has been interpreted to apply to Indian reservations.

So, State law, for example in Nevada, may allow gambling by mechanical devices, but on Indian reservations within the State of Nevada the Federal law applies. The Federal law would prohibit it. I am not sure I have answered your question.

Commissioner WHITECROW. I am not either.

Commissioner DEER. What impact will Mr. Atcitty's death have on your task force work? What problems will be encountered?

Mr. PARKER. We feel that he made a substantial contribution to the direction of the task force. We feel we are capable of filling in the main points he was interested in.

To answer your question: I do not think it will lessen the effectiveness of our report.

Commissioner DIAL. Mr. Chairman, I have a question. Mr. Parker, we have 50 State constitutions, they vary from maybe more than 300 pages to a few pages. Yet we have a few model State constitutions. Do you feel you could come up with a model tribal constitution? I am not suggesting you do it, but has anyone tried a model tribal constitution? One that the Congress could look at and then it would never be in conflict with the U.S. Government or the State.

Mr. PARKER. Historically, when the Indian Reorganization Act was passed, the Bureau of Indian Affairs ruled on a model constitution which many tribes, who adopted the Indian Reorganization Act, adopted. It was like a boilerplate constitution. There were some revisions from tribe to tribe.

That has proved to be a very big obstacle to many tribes. The constitution, when it was drafted, was never very good and it soon became outdated.

To get to the other part of your question: I feel quite definitely that a model constitution is not appropriate because of the tribes rights to be different.

Commissioner Deer's community has been involved in writing and adopting a constitution, which I have looked at, as a very good working model. There has been talk among groups like the Native American Rights Fund of putting together a constitutional workbook which will contain an alternative set of provisions and will be a progressive update following the Indian Reorganization Act.

Commissioner DIAL. The problem is more complicated than it states.

Chairman ABOUREZK. Any more questions? Thank you.

Mr. PARKER. Mr. Chairman, there was a question that was raised and I hope it is not inappropriate if I were to ask you a question.

In many of our meetings across the country, and I am sure other task forces have had the same experience, we have met with the tribal people and have not come to them with a defined set of recommendations.

We came to them to find out what their problems were, what their views were, in response to some generally defined prolems. It was expressed to our task force many times, and I am sure to other task forces, a very keen interest on the part of the tribes across the country, whether or not they would have another chance to express their views once the task force reports were written and recommendations were defined.

I was wondering if, in the minds of the Commission, that means the task force reports will be published and distributed prior to the final stages of the Commission's work, so when the Commissioners go out on their own to, again, solicit any views, the views can be expressed in reference to the task force reports?

Chairman ABOUREZK. I don't know if it is physically possible to do it, but I would like to see the task force reports printed in pamphlet form only, with sufficient copies, say 500 copies of each report, and it would be the responsibility of the task forces to distribute those to the tribes right away.

Prior to markup by the full Commission, we want to hear what they have to say about your recommendations. I think that is essential. I would like to hear the other Commissioners express themselves on that.

Commissioner WHITECROW. I, too, have had the same kind of comments. I think the people out in the field certainly need this opportunity. They are very concerned about what recommendations come out of the Commission.

They have had comments made by many of the congressional Members, not on the Commission, who have indicated they are going to wait to see what this Commission comes up with before they really push for any new Indian legislation.

As a result, I think it is very important we get our task force reports into the field so they will have an opportunity to comment before we make any recommendations.

Chairman **Abourezk**. Is that pretty much the feeling around the table here?

Congressman **Meeds**. As long as it does not impair the time limit under which we operate. I would not like to see it used as a reason to extend the life of the Commission past its present life.

Chairman **Abourezk**. I think if the task forces get the reports in on time, we can do that. If they don't, we may not be able to do it.

I have a constant reminder that I give myself, we are not going to extend the life of the Commission, we are going to fulfill the deadlines we have set.

Congressman **Meeds**. My opinion is, Mr. Chairman, that we as a Commission, after those have been submitted, could have some hearings and get the input of the people who have had an opportunity to go over this, before we write our recommendations.

Chairman **Abourezk**. Within time limitations, that is an excellent idea.

Commissioner **Dial**. Mr. Chairman, where would the final report rest, in the Archives or the Library of Congress? Where will the task force reports be held and what will go into the task force reports? How about this table full of reports?

I am very much concerned about this. When the Commission makes the report, it is possible that the Commission can disagree with much of what is in the task force reports. Someone doing research 20 years from today, certainly would like to go through the task force reports and see how well the Commission worked with the task force reports, or did they give a minority report, or what did they do. What happens to all of this?

Chairman **Abourezk**. The reports themselves will be distributed to every Member of Congress. The task force reports themselves are important only in the markup process. The ultimate recommendation to Congress will be contained in the final Commission report.

The backup material, of course, there will be several bound copies of that as part of the permanent record, and that will go to the Library of Congress and, I assume, the Archives. I am not sure.

Commissioner **Dial**. Ten years from now I want to see this hearing today, where will I find it?

Chairman **Abourezk**. It would be in the Archives. Every transcript we have made. As a matter of fact, as an historian yourself, I think we ought to put you in charge of that.

Commissioner **Dial**. Oh, no.

Chairman **Abourezk**. That is something an historian would think of right away. It is very important that these get placed..

Commissioner **Dial**. Raw material is important.

Chairman **Abourezk**. The documents we come up with will be referred to for some time to come, we hope.

Congressman **Meeds**. Do you contemplate any difficulty in finishing your report on time?

Mr. **Parker**: No.

Congressman **Meeds**. Thank you.

Chairman **Abourezk**. We will take a couple of them out of order. Task force 10. Usually the later task forces wind up at the end of the meeting. We are going to try and put them in a little ahead.

Congressman **Meeds**. Mr. Chairman, before we proceed could I ask the Chair to entertain a motion? I will put this in formal language in a minute. I would like to propound a set of questions to the core staff, which are technical questions. I will not take the time of the Commission with them now. I would like to have those questions answered within a specific time, whatever time we agree they could be answered in, and the replies and the questions be sent to all of the Commission members.

Does the Chair see any difficulty in that kind of exercise? It would save a lot of our time today.

Chairman **Abourezk**. If you will state what you want, I will direct that it be done.

Congressman **Meeds**. I will furnish the questions in written form.

Chairman **Abourezk**. Without objection, that is ordered.

Congressman **Meeds**. Mr. Chairman, I move I be allowed to propound a set of written questions to the core staff and that copies of those questions and the answers thereto be made available to all Commission members within 2 weeks of the submission of those questions.

Chairman **Abourezk**. Without objection, that is ordered.

Would you introduce yourself?

## STATEMENT OF MS. JOJO HUNT, CHAIRWOMAN, TASK FORCE NO. 10, ACCOMPANIED BY JOHN STEVENS AND GEORGE TOMER

Ms. **Hunt**. I am JoJo Hunt, chairwoman of the task force on terminated and nonfederally recognized Indians, task force No. 10.

To my left is Mr. John Stevens who is a member of the task force and to my right, Mr. George Tomer, task force specialist.

Chairman **Abourezk**. What is the objective of your task force?

Ms. **Hunt**. The objective of our task force is to show the legal relationship between the U.S. Government and terminated and nonfederally recognized tribes, and to also show, for the first time, an overview, a look at those particular organizations.

Chairman **Abourezk**. What day is your report due?

Ms. **Hunt**. August 17.

Chairman **Abourezk**. Will you have any problem getting that report in?

Ms. **Hunt**. I think we will have the report on August 17.

Chairman **Abourezk**. You think you will?

Mr. **Hunt**. We will have the report on August 17.

Chairman **Abourezk**. What preliminary conclusions have you come up with?

Ms. **Hunt**. In our preliminary report we have not listed conclusions and recommendations. We have tried to be very objective and have all of our documentation before doing any conclusions and recommendations. However, we have come up with certain perceptions.

Chairman **Abourezk**. Would you outline some of those?

Ms. **Hunt**: This has come primarily from hearings and other communications with terminated and nonfederally recognized communities.

In looking at certain Federal programs that are for terminated and nonfederally recognized tribes, there appears to be—and in talking with the communities they certainly feel—there has been funding more of federally recognized tribes than terminated and nonfederally recognized tribes in those programs.

In the next few weeks we are going to be talking with some of the program people. We will be looking at some of the lists of groups that have been funded under title IV, parts (b) and (c), the Comprehensive Training and Employment Act and also under ONAP.

Primarily, the kind of problems that we see with those programs, after they get into the field, is a lack of technical assistance.

Now, title III of the manpower program probably provides the largest amount of money going to terminated and nonfederally recognized communities. There has been virtually no technical assistance provided. It is a complicated program and exit audits have been conducted on a number of programs, leaving those communities with no kind of funds.

Some of the other conclusions or perceptions are that the whole idea of terminated and nonfederally recognized Indians, looking at those particular groups, it is not as simple as it seems.

There are unenrolled members, obviously Indian, who have always lived as Indians, but who did not get onto the rolls of federally recognized tribes. There are members of terminated rancherias in California who have been unterminated. There are also, for example, in California and in Michigan, federally recognized individuals who are receiving Bureau of Indian Affairs services and there is no federally recognized tribe.

Trying to cover all of those bases, the hearing certainly has provided a lot of information. Outlined in the quarterly report are some of the other perceptions we have.

An adequate knowledge of Federal and State delivery system of social services: For example, terminated and nonfederally recognized communities still do not know where to go within the State government to get certain services they are eligible for as citizens.

When they do go, sometimes there appears—certainly from talking with them—to have been a great deal of discrimination. That certainly is true for citizens in general, it seems when you hear reports on welfare systems and that kind of thing.

Terminated and nonfederally recognized Indians dealing with State agencies certainly fall into those kinds of situations with the same kinds of problems.

In looking at termination, it appears many of the provisions of Termination Acts were not fulfilled. For example, in California with the Rancheria Act, we see the Bureau of Indian Affairs now recommending some of the rancherias be unterminated because they, themselves, admit that section III(c) provisions to provide adequate water, et cetera, have not been provided prior to the issuance of the proclamation in the Federal Register.

We certainly see, preliminarily anyway, the need for a closer investigation of the distribution of assets. I think we have found in testimonies, a recurring kind of presentation of the mismanagement of assets during termination.

That is something for individual tribes that we feel we cannot get to as much as we would like to. So possibly, even probably, in our final recommendations, we will call for certain full-scale investigations, that we have found, so far, to be necessary.

We will be doing other legal, historical, and general research in the fourth quarter to find out as much as we can about these particular things, particularly Klamath and the termination of the mixed bloods on the reservation in Utah. They really come to life when you talk about mismanagement of some of the assets.

Congressman MEEDS. JoJo, when was your report due?

Ms. HUNT. It was due May 18.

Congressman MEEDS. When did you have it in?

Ms. HUNT. June 3.

Congressman MEEDS. What was the disparity between the time it was due and the time it was in?

Ms. HUNT. We were in the process of finishing our hearings. We have only one more to go now. Since the 1st of May, we have conducted 18 scheduled site visits and hearings, with the transcripts coming in on which to base some of the conclusions. We tried to wait as long as we could so we could do preliminary conclusions and recommendations, but that was not possible. We did not have all of the backup material we could point to——

Congressman MEEDS. You are aware, are you not, that the failure to have this in on time or approximately on time, deprived us of an opportunity to see it before your appearance here?

Ms. HUNT. Yes; it is certainly regrettable. It won't happen again. Obviously, there is one more report to do. I will make myself available for any questions that any of the congressional members have after they have seen the report.

Congressman MEEDS. Are you using consultants?

Ms. HUNT. Yes.

Congressman MEEDS. How many?

Ms. HUNT. We have two consultants in Washington State to do a report on Washington State nonfederally recognized tribes, because so many are going for Federal recognition. We have a consultant in Oregon, there are some 60 terminated tribes in Oregon. He will be doing a subject report.

The other consultants will be called on during the fourth quarter. We have been in the process of trying to get them cleared, one to do the final work on the legal question of trust responsibility and Federal recognition and another to deal with termination.

Congressman MEEDS. Have you sought the help of the core specialists on the question of trust responsibility?

Ms. HUNT. Not specifically on that. We have sought to utilize the research staff to look at some regulations, to see if they comply with the laws——

Congressman MEEDS. About how many hours? Can you give us an estimate on how many hours you have used core specialists?

Ms HUNT. In the beginning we asked them to get certain materials for us. I could not estimate the time. Also, I could not estimate the time they have been working on the regulations.

We talked with George about 3 weeks or so ago to look at the regulations.

Mr. TOMER. In the last week of April we were getting together with Gil Hall on a certain report we would require prior to the final report, regarding the rules and regulations, an analysis of the act and rules and regulations of the disparities and also, consideration of applications of nonfederally recognized and terminated tribes.

Congressman MEEDS. Can you give me an estimate of the time?

Mr. TOMER. I am trying to lead up to this. Since he could not make the meeting the next time and I could not make the meeting, and finally the last part of May, we had another meeting. We talked about what I assumed was that he would be compiling certain information on which we would have discussion and see what we could possibly do.

Then, yesterday, I called Dennis, who is his assistant, and asked him if they had done anything, and he had not. So, I don't know if they have done anything at all.

Congressman MEEDS. Do you feel you have had good cooperation from the director and the core staff?

Mr. TOMER. With the director, Ernie, we do get cooperation, but as far as fulfillment of what we ask for, certain needs from the core staff, what we have relied upon is our own resources.

Initially, we outlined things which we needed the core staff to do, but have not received them. So we relied upon our own activities consequently.

Congressman MEEDS. What kind of cooperation are you getting from Federal agencies?

Mr. TOMER. As far as the Federal agencies are concerned: We will be dealing with that primarily with task force 5 when they do a task force hearing with the agencies. Up to now, we have had no, or minimal, contact with Federal agencies.

Ms. HUNT. I might add, we wanted a list of the Indian prime sponsors matched with the counties which they are to be served. I called over to the Department of Labor to see if that kind of information was available. How else would they fund certain groups? I was told, no indeed, it was not available. It would take too much time, it was an impossible task to get that. I then tried to work through the research staff, they had a list of the prime sponsors, but I do not believe we have been able to match them up with the counties that are to be served.

One of the main reasons in asking for this information is that certain prime sponsors have entire States. We found three communities in that particular State are getting no services at all and they are nonfederally recognized communities.

Congressman MEEDS. I might say I agree with you. It is too early to be arriving at even preliminary conclusions and I liked your use of the word "perceptions."

Chairman ABOUREZK. Other questions?

Commissioner DIAL. I attended 7, 8, maybe 10 days of task force hearings in Louisiana, North Carolina, and maybe some other places, with terminated and nonfederally recognized Indians. Did you come in contact with many nontreaty Indians?

**Ms. Hunt.** Nonfederally recognized Indians: A lot have treaties with States and some have treaties with the Federal Government. But then if you look at federally recognized Indians, not all of them have treaties either. That is one of the misconceptions when everyone talks about treaties and treaty rights.

Commissioner **Whitecrow.** JoJo, have you given any thought to recognition for tribes. For instance, in one of the task force hearings I attended, one of the hearings you conducted in Boston, the statement made by——

**Ms. Hunt.** We have included that in the third quarterly report as an example of some of the philosophy we are getting.

Commissioner **Whitecrow.** Have you given any study to establishing or perhaps alleviating this division of Indians such as recognized or nonrecognized, urban or rural, metropolitan, reservation, off-reservation. Have you given any thought in regard to trying to centralize recognition status to Indians rather than having this divided attitude?

**Ms. Hunt.** We have given it a very great deal of thought. *Passamaquoddy* versus *Morton* coming out of the first circuit, the trust relationship if you will, is based on the 1790 Indian Non-Intercourse Act. That would certainly be applicable to Indians throughout the United States.

When you talk about Federal recognition which ties Indian tribes to the Bureau of Indian Affairs, we get a lot of problems, a lot of real questions raised by nonfederally recognized tribes in particular, in the field. Certainly, not all of them have land. Those who do not have land, some have individual holdings. They don't want to leave that and feel they have to move to a reservation.

Other groups have tribal land but they are not sure they want to have the United States hold it in trust for them because of certain restrictions on that land.

Now, we have obviously come to the conclusion, after all of these different reactions, there should be options; that Indians should be eligible for services and legal research should be completed.

Certainly, it should not all have to fall within one particular pattern of the kind of status, if you will, and then we look at reservation and nonreservation status that Indians have to have to get certain services.

Commissioner **Whitecrow.** Do you feel it is an important matter to approach this from the standpoint of having Indian affairs blanket the entire spectrum of Indians rather than having the various agencies of Government look at all these divisions of Indians such as I mentioned?

**Ms. Hunt.** I have certainly come to that conclusion myself as a member of the task force and after hearing testimony and also seeing some of the discrepancies in funding.

Not only is the Bureau of Indian Affairs not supplying services to terminated and non-Federal tribes, but in some cases, other programs. Because of budget limitations again, they are not funding some of the proposals that are going in—some excellent proposals. So I think it spills over to those other agencies.

Commissioner **Whitecrow.** As I recall, when we separated these task forces, task force 10 and task force 8, this was one of the principal reasons because of this vast subject area. I am sure task force 8 has reached the same conclusion. I will ask them that question.

Ms. **Hunt**. I might add, all of the terminated tribes, except possibly some of the terminated Utes, want to be restored.

Commissioner **Bruce**. Do you plan to define the standards for recognition of tribes?

Mr. **Tomer**. Basically, I have reviewed the Federal recognition petitions for the northwest tribes and a number of criteria by which recognition should be restored or given to tribes.

The conclusions, after looking at such criteria, are in looking at the concept of the tribe itself, and that should be the only criteria. A lot of criteria are looking at the cultural values and also the Federal relations with that certain tribe. Such a criterion would demonstrably alienate and discriminate against certain tribes. A criterion should only look at the nature of a tribe itself as a sovereign entity.

Basically, for example, on the conclusion of tribes to Federal participation of the agency, should it be created, there has been talk about how to create such a relationship.

Basically, if it was defined on treaty rights, then we would be excluding those tribes which had no treaty with the U.S. Government.

We would also have to look at tribes which had treaties with the Colonies and other nations and with the States themselves.

Then, those having no treaty—if you didn't sign a treaty, you didn't give away any rights. If we look at the MicMac in Nova Scotia and Maliseet in New Brunswick and Canada, they had law suits by which they had not signed away their land or any rights of their tribe.

If you are going to construct a new agency based only on treaty relationship, it should also be added on for the nontreaty Indians, looking basically at the ethnic history of that tribe and the legal relationship it has had with the colonies and the States. In addition, you should look at any relations it has had with the Federal Government.

Chairman **Abourezk**. Can I break in on that? I didn't understand all of that George. If the Federal Government were to sit down and try to determine whether they ought to recognize tribes that are not now recognized: Will you provide a set of standards by which they can do that?

Mr. **Tomer**. Basically, what I tried to say was imposition of a criterion is very difficult. You are looking at, for example, a logical formation of policy. First of all, if you look at a definition of American Indian——

Chairman **Abourezk**. I am not asking you to formulate the standard now. I am asking you if you will or will not. You can answer yes or no.

Mr. **Tomer**. I think a standard could be devised. However, it could only be done with a full knowledge of a possible doctrine of trust responsibility to all Indian tribes.

Chairman **Abourezk**. Do you intend to try to devise that standard?

Mr. **Tomer**. If possible.

Congresman **Meeds**. Let me add my judgment to that of the chairman. I would think one of the salient tasks of your task force group would be either to recommend to us, or recommend that it cannot be done, the designation of criteria and procedure under which not-now-federally-recognized tribes or bands, can receive recognition.

I think that is one of the things this Commission has to make a decision on. I know as chairman of the Indian Affairs Subcommittee of the House Interior Committee, I am confronted, almost daily, with a request from some presently unrecognized group that wants the recognition.

At this juncture, we have failed to take that on, awaiting the report of this Commission. I think we would be remiss if we did not make some kind of recommendation on it.

Unless youn can provide some background for it, otherwise I think the Congress is going to have to legislate some kind of omnibus recognition. There are tribes, groups, and bands out there that ought to have an answer on that.

Ms. **Hunt**. We certainly ought to come up with a recommendation regarding this.

Chairman **Abourezk**. Any other questions?

Commissioner **Bruce**. Have you had good cooperation from Federal agencies?

Ms. **Hunt**. I only mentioned a little while ago the contact with the Department of Labor. Otherwise, we have been going through the core staff to get certain information. We will be visiting some of the agencies in the fourth quarter and requesting other material.

If any problems come up, we will certainly be calling on the Commissioners to help us with it.

Chairman **Abourezk**. I might ask the question that is foremost in everybody's mind. I have dealt with this more than any other member of the Commission. The core staff itself has tried to get a great deal of information out of the Federal agencies and we have had a running gun battle with them, I might say.

It has taken up a lot of time of the core staff just trying to get information. I don't know the experience of every task force in this regard, but I assume you have left a lot of this up to the core staff.

Ms. **Hunt**. We have channeled most of the requests——

Chairman **Abourezk**. I have been involved in a number of confrontations with a number of the agencies in trying to get that information.

Ms. **Hunt**. One thing that was helpful in looking at the California termination situation, we had hearings in the first part of March in Washington, Oregon, and California. When we were in California, we went to the Sacramento area office and looked at some of the reports there, recommending that some of the rancherias be unterminated.

I think we got really good cooperation. All of the documents they had were available in a couple of file cabinets there. We had ready access to them. We will be sending a task force specialist back to the Sacramento area office and also over to the agency, to look more into this situation—to review the documents more closely.

Commissioner **Bruce**. Mr. Chairman, one more question. This is an important and touchy task force. We need to look at this so you don't just submit it and run away. What was the date you were talking about when we could get the final report?

Ms. **Hunt**. August 17 is the deadline. We have indicated in our quarterly report, as soon as we are able to, probably within this month, we will be making another kind of report outlining the preliminary conclusions and recommendations. So, if we are in the wrong ballpark, the Commissioners can tell us.

Commissioner **Dial.** Is your budget holding out all right?

Ms. **Hunt.** Our budget seems to be holding out all right. We were cut $5,000, and we also get memos to the effect we should save money, which we have tried to do all along. We will spend it only when necessary to get the job done, but we ought to be able to spend it to get the job done without being hampered by any kind of outstanding memoranda that will curtail some of the task force activities.

Commissioner **Deer.** I attended the hearing in Arizona with the Yaqui Indians. There was some mention of the relationship with Mexico and also with Canada. I think it would be important to have some information on the international aspects of these tribes.

Ms. **Hunt.** We had certainly outlined that as the third section of priorities that we probably could not get to, but certainly we can deal with it on some kind of basis.

I was reading the other day an opinion regarding the MicMacs and Malisetts that become involved across the border. They get involved with the Government because of the treatment of the Mexican Government to them, as well as the Jay Treaty of Canada.

Commissioner **Dial.** Senator, do you know how many hearings we have from this date on for the task forces?

Ms. **Hunt.** We have one more scheduled task force hearing, but we are going to participate in task force 5's hearing.

Chairman **Abourezk.** It sounds like there are three or four hearings. Thank you very much.

Mr. **Hunt.** I would like to commend Commissioners Dial, Deer, and Whitecrow for attending our hearings.

Chairman **Abourezk.** Task force 7.

## STATEMENT OF LORRAINE RUFFING, TASK FORCE SPECIALIST, TASK FORCE NO. 7

Ms. **Ruffing.** My name is Lorraine Ruffing. I am a specialist for task force 7, reservation and resource development and protection.

Chairman **Abourezk.** Lorraine, what is the objective of your task force?

Ms. **Ruffing.** The objective of task force 7 is to identify the obstacles to development. We are investigating these obstacles at two levels, the reservation level and the Federal agency level. After we have identified the obstacles, we will propose remedial action and in particular, we were asked to review the status of Indian housing and to draft an Indian housing bill.

Chairman **Abourezk.** When is your report due?

Ms. **Ruffing.** Our report is due August 3. We will have a preliminary report in. A preliminary report is a report that has not been polished. I think I would probably want someone to go over the report after we have handed it in and make it a polished document.

Chairman **Abourezk.** Can you polish it before your deadline?

Ms. **Ruffing.** I doubt it. I think we will need 2 weeks after we hand in our final report for the polishing.

Chairman **Abourezk.** Is there any way you can get it polished before the deadline?

**Ms. Ruffing.** I suppose so. We have money in the budget, we could hire a journalist to help us.

**Chairman Abourezk.** I think it is essential you do that and we have your final draft report at the time we have asked that it come in. I don't think we will have time after that. We have got other things we have to get done. I think whatever you need to do, as long as it is reasonable to do, you should do it. Have you come up with any preliminary conclusions?

**Ms. Ruffing.** Yes; we have. On the reservation level, we have come up with the following factors we feel are the main obstacles to economic development.

The first is the extreme dependency of the reservations on the Federal Government and the fact they have no control over resources or programs.

The second is the erosion of the Indian land base and the third is the lack of capital and the lack of manpower training which prohibits tribes from developing their own resources. The fourth is the fact that when these resources are developed by others, by non-Indians, the results or proceeds are being siphoned off by State taxation. That is at the reservation level.

**Chairman Abourezk.** State taxation?

**Ms. Ruffing.** State taxation. For example, the Navajo tribe receives less in bonuses, royalties, and rents from their coal than does the State of New Mexico and Arizona. They receive more in taxes from Navajo resources than the Navajo tribe itself.

**Chairman Abourezk.** I thought they were exempt from State taxation.

**Ms. Ruffing.** If you will look in U.S. Code 25, the State may tax any non-Indian member producer on a reservation.

**Chairman Abourezk.** If they contract out mineral production——

**Ms. Ruffing.** That is right. The current production method is to lease them out to others. Those non-Indian developers are subject to State taxation.

**Chairman Abourezk.** If the tribes don't have to pay taxes, why don't they make sure they get their share and let the contractor worry about his State taxes?

**Ms. Ruffing.** The difficulty is, if there is a high rate of taxation, the tribe will be able to get less because the person who is agreeing to that is going to figure that in his costs.

**Chairman Abourezk.** When any contractor comes in to develop resources on non-Indian land, privately owned land which is non-Indian, wouldn't the same thing be true?

**Ms. Ruffing.** Subject to State taxation on non-Indian land. I will assume he would have to calculate what his rate of taxation is going to be to know what his final profit would be.

**Chairman Abourezk.** When you say the tribal income is being siphoned off by State taxation, there is really no other way to get around that as I see it.

**Ms. Ruffing.** There is a way to get around it. If the tribe itself could develop the resource, they would not be taxed.

**Chairman Abourezk.** That is true, but if you have to hire an outside contractor——

**Ms. Ruffing.** Right.

Chairman **Abourezk**. How do you propose to get around these other obstacles, if you have them ready?

Ms. **Ruffing**. I would like to go on with the obstacles we found on the Federal level, because they are related to these obstacles on the reservation level and then give you our solutions.

On the Federal level, we found there is a complete lack of a development strategy; that there is no coordination among Federal agencies. I believe this has been very well documented in two GAO reports.

Chairman **Abourezk**. Would you say in a new Indian agency there ought to be a particular group or division that would coordinate resource development on the reservations for one part?

Ms. **Ruffing**. Yes.

Chairman **Abourezk**. Specializing in that?

Ms. **Ruffing**. Yes; not only resource development but anything that relates to economic development.

Chairman **Abourezk**. Is there anything like that in the Bureau of Indian Affairs?

Ms. **Ruffing**. There is no resource development in the Bureau of Indian Affairs.

Chairman **Abourezk**. It is sort of catch as catch can?

Ms. **Ruffing**. You can say that they are engaged in resource protection rather than resource development. There are no Indians who are developing their own coal, their own gas and oil, or who have a completely integrated timber enterprise. Many of them do have sawmills, but on how many reservations do you find they not only do their own logging, they have their own sawmill, and they have their own wood product industry?

The other obstacle is not only lack of coordination, but lack of Indian control. To remedy the problems on the reservation level we feel: First, a development strategy must be designed which seeks to create self-sufficient tribal governments and economies.

Second: That this new strategy must be implemented by a new structure, which could consolidate all development programs. We are going to work on refining what the strategy will be and what the structure will be.

Chairman **Abourezk**. Other questions?

Commissioner **Whitecrow**. Yes, I have a question, Mr. Chairman. Lorraine, have you coordinated at all with task force 3 in regard to any possibility of consideration of tribal development being eligible and available through long-term financing of economic enterprises for the tribe through the World Bank?

Ms. **Ruffing**. No: I don't believe we have coordinated with task force 3. One of the reasons is they are getting underway with their Bureau of Indian Affairs management study.

We would want to see the results of this Bureau of Indian Affairs management study to see how our recommendations compare with the result of that study.

As far as looking into the structure of the World Bank, we certainly intend to do that. I am particularly interested in methods of financing the World Bank might be using that might be applicable to whatever new structure the task forces decide to set up.

I believe task force 1 and also task force 9 are recommending some of the same things we are. We would be working together, hopefully, on the structure.

Commissioner **Whitecrow.** I would be sure to suggest you coordinate this. I have personally made some approaches to the World Bank. They think there may be some possibility that Indian nations would be eligible, provided we could bring about some sort of legislation that the Federal Government of the United States would support.

Ms. **Ruffing.** I would be interested in talking to your contacts over there on the structure we are coming up with and how it could be financed. As far as future meetings of task forces: We have a meeting on June 18, when we will discuss our recommendations to see if they can converge or diverge or what the status is.

Chairman **Abourezk.** Do you know what the White Mountain report is? The one done by the General Accounting Office.

Ms. **Ruffing.** That was a very comprehensive study, that took 2 years and $450,000. They studied the impact of all Federal programs. They undertook the study because they were slightly dissatisfied with three reports which studied housing, health, education, and economic development in a very disjointed manner. They wanted to consider all of the Federal programs and the impact they had on income and employment.

Chairman **Abourezk.** Other questions?

Commissioner **Deer.** Could you tell us about the task force itself? You are the specialist; there are three people on the task force not here. Why aren't they here? What is their level of participation? Those are the kind of things I would like to know.

Ms. **Ruffing.** First of all, Peter MacDonald is not here because the Navajo Tribal Council is in session, and while it is in session he feels it is necessary that he preside over those sessions.

Ken Smith is not here because he is on a site visit to Hoopa Valley. We have two remaining site visits to make and we had to reschedule the site visit for Hoopa Valley four times because of deaths and other problems. I felt it was really crucial that he finish. I think we have offended the people of Hoopa Valley, possibly beyond repair, by canceling the visit four times. I felt it was necessary we honor that commitment.

Phillip Martin has made a large number of site visits, but was unavailable today.

Mr. **Stevens.** While we are on that vein, everybody has schedules. One of the things that happens to the staff we call all the Commissioners, set a date and try to get a date. Then it depends on the congressional Members.

We were forced to call one rather quickly this time and two of the task forces have hearings and they have those conflicts. When task force 11 comes up, I would like to answer the question in advance, but they have had a hearing scheduled for some time and the remaining two members have to be there.

Commissioner **Deer.** What consultants will you be using?

Ms. **Ruffing.** The main consultant we have been using is Prof. Ronald Trosper of the University of Washington. We have also hired four consultants to write our studies.

Mr. Robert Waterman is writing our study on Indian housing; Jack Peterson is writing a study on Indian agriculture; Mr. Frank Ryan is writing a study on how EDA sets their project priorities; and Emil

Notti, who is president of the Alaskan Federation of Natives, is writing a study on the impact of the Alaskan Native Claims Settlement Act. All of these reports are due by June 30.

Chairman ABOUREZK. Any questions? If not, thank you Lorraine for a good presentation.

## STATEMENT OF HELEN SCHEIRBECK, CHAIRWOMAN, TASK FORCE NO. 5, ACCOMPANIED BY KATHLEEN McKEE

Ms. SCHEIRBECK. I am Helen Scheirbeck, chairman of the Indian education task force. Kathleen McKee is the task force specialist.

Since the last meeting of the Commission, we have a new task force member, Ms. Lorraine Misiaszek; she is a member of the Colville Tribe. She is an active member of our task force.

Chairman ABOUREZK. When is your report due?

Ms. SCHEIRBECK. August 17, 1976, and may I say I am certainly happy to see that day come.

Chairman ABOUREZK. You will have that date in easily?

Ms. SCHEIRBECK. I am not sure about the easily, but we will have it in.

Chairman ABOUREZK. It will be in final form?

Ms. SCHEIRBECK. Yes, we will have a preliminary report of our final report by July 15.

Chairman ABOUREZK. What is the objective of your task force?

Ms. SCHEIRBECK. We have a number of objectives. We could not decide on one. Our first objective was to look at the Federal relationship based on treaties and the Constitution in terms of the education of the Indian people.

The second objective was to look at the policies and procedures of the agencies carrying out those policies. The third objective is to look at the manner in which Indians have been included in such policy decisions in their community and to look at the definition of Indian for the purposes of educational services; but basically, overall, to trace all of those subcategories, if I might call them that, into defining the relationship, or the Federal role, of the Government in the education of the Indian people.

Chairman ABOUREZK. Do you have any preliminary conclusions or recommendations?

Ms. SCHEIRBECK. Identified in our quarterly report are a number of critical issues which we certainly would be making recommendations about.

The first would be a clarification of the Federal role in education as it relates to all Indian people. Under that clarification would be a policy statement about the role of the Federal Government attempting to set out that role, also attempting to define the role of the States. It is certainly a tricky area which has to be addressed in Indian education.

We will also be recommending, in that policy statement, the way Indian should be defined for purposes of educational services. That would be our major recommendation.

Our second major recommendation will be what we call, in this quarterly report, a new service model for Indian education. A number of people here today from other task forces have talked about a new agency. I think we will be recommending instead a national commission for Indian education, which would not be a part of that new agency, with a time, for example, of 10 years.

We feel Indian education is a critical priority. In the majority of instances, the tribes do see it as a priority. We feel Indian educators need to give it the status needed for the manpower and the development of communities. It should be set apart and Congress should be putting special emphasis in the education area.

Chairman **Abourezk**. Other questions?

Commissioner **Deer**. What problems do you foresee in completing your report and what problems have you had to date?

Ms. **Sheirbeck**. I see, frankly, money as one of our problems, since we have had a new task force member join us late and because at the last Commission meeting there was a consensus, it seemed, that we should hold hearings. We had not planned to do that. We were doing case studies.

I did report your concern to the other task force members and they voted to have hearings. Of course, we did that and that has cost us quite a bit of money. Our task force member, Ms. Misiaszek, would like to work full time and have an assistant. As far as I can tell from our budget, it is very difficult to accomplish that.

I feel we need to get you to maybe suggest to us a way to get some more money. I think we can meet the deadline but we need some additional help. We have lots of data, but we need some help in analyzing that data.

Commissioner **Deer**. Have you discussed this with the core staff?

Ms. **Sheirbeck**. I have not discussed it with the core staff, I have not been back in town that long. I did want to bring it to the attention of the Commission.

Commissioner **Deer**. What was your assessment of the hearings? Did you think they were helpful, or worthwhile, or just an exercise?

Mr. **Sheirbeck**. I felt, particularly the hearings east of the Mississippi, in the terminated communities, were very beneficial. I also had site visits with parents, school board members, and the administrators. I thought those were very worthwhile. I think it gave me a much clearer picture of abuses in title IV, particularly from the administrator's eyes, a lot of the problems they see with the Federal programing in Indian education.

I would say the hearings were helpful. A massive amount of work goes into those hearings—I did not feel the benefits we got warranted the amount of work. Education is not a separate area in which to hold hearings. We have multiple people we have to mollify, not just tribal councils.

I would say we averaged at every hearing of notifying a minimum of 500 people. In most of our hearings, we had anywhere from 18 to 150 people show up. It is very hard to do more than 20 witnesses a day and do an accurate job.

I am sorry now we did not recommend that all task force members be full time. I think our task force members have been able to attend the hearings, but in the conceptualization or writing of reports, we have not been able to count on them. I am certainly hoping they will agree with the report we write, because we are carrying the burden of the workload.

Chairman **Abourezk**. Are there other questions?

Commissioner **Dial.** How much money are you talking about?

Ms. **Sheirbeck.** I am trying very hard to estimate that. I told the last Commission meeting that if we had to have additional hearings we would need an additional $8,000 to $10,000. I would guess that is where we are going to come out once these hearings costs come in.

At the last meeting, I thought we got a nod on that question, but I have been in the field since then so I have not firmed up that nod with concrete money.

Commissioner **Bruce.** Have you had any problems with Federal agencies—the Bureau of Indian Affairs?

Ms. **Sheirbeck.** We have been getting good data, but it has been extremely slow. Kathleen has been doing a lot of the research.

Ms. **McKee.** We started doing our work with the Office of Education back in December. That was the time we requested assistance from the Commissioner of Education, to go into the agency and talk with each of those programs, which expends moneys that could benefit Indians or directly provide services to Indians. We felt it was important; we wanted to see where the services work and where they do not work. We also wanted to try to get a fix on why we talk about such large dollar amounts for Indian education and, by and large, see very negative results.

We spent the entire month of January getting clearance at the Commissioner level. Since then I would say the response of the agency has been mixed. I would lay it out for the record what the problem has been. It really pinpoints the kind of resistance that Senator Abourezk has been getting.

A lot of the people I have interviewed over the past week—and I have been having an average of four interviews a day in order to get to 40-some programs—have told me I have pulled something very slick on the agency because the executive office has now said that program people do not fill out questionnaires and do not sign off on any document that will go to the Congress and they are forbidden to talk with me, except in very limited circumstances and under close supervision.

I had thought, in an effort to show them I appreciated their time, I would come over and pick up the questionnaires. So people have filled out the questionnaires and given me all of this detailed policy information. I have walked in and picked it up and taken it out of the office and found out, after the fact, had it in fact gone through what is, in fact, their established clearance process now as a result of administrative changes that have taken place in the last 4 to 6 months, that the documents they have given me would have been gutted by the bureau or branch head and I never would have gotten most of the materials that I have gotten.

What I have been told by many program people is that there is a distinctive change in the climate of agencies; that there is a reluctance to have those employees talk to members of congressional staffs; that the agencies themselves are under very tight pressure.

Where they are asked to administer education laws that the administration does not like, to reinterpret those laws in such a way the administration can live with them, or the administration can kill off the program. These are the kinds of responses I am getting from people and they say it is amazing how I have made it through 20-some programs already and walked out with an answered questionnaire, in view of the fact it hadn't gone up through the hierarchy.

I would say, if my luck holds out, we will have a very interesting package of material, but it is not because we are getting the full cooperation of the agencies. It is because I have happened to slip through a loophole in the system.

Commissioner BRUCE. You said you had a number of educational people testifying, is that true of all of your hearings?

Ms. SCHEIRBECK. We work with the other task forces; we worked with task force 10 as well, and also with the tribal government group when they were putting their survey together on questions. I think we will have excellent coverage by the time we get the results from their work and our work as well.

Commissioner BRUCE. Are you going to recommend all education be placed in the Bureau of Indian Affairs?

Ms. SCHEIRBECK. We are going to recommend there be a National Commission on Indian Education and it be taken out of the Bureau of Indian Affairs and they maintain the budget responsibility but give the program responsibility to Indians, so we will not get into the fight of transfer, if that is the question you are asking.

Commissioner WHITECROW. Helen, are you saying you are going to be going along with task force 3 in creating a separate agency and bringing education under that agency?

Ms. SCHEIRBECK. I am saying, this has not been cleared by our entire task force. Education is such a critical need area, such a priority, that while we certainly would endorse a new agency for Indians, we would want to see a special elected national commission on Indian education for a period of 5 to 10 years, to assist in the gaps, the catch-ups needed in Indian education and then it seems an assessment could be made as to what form education then takes—is it all public school or something else.

Commissioner WHITECROW. This is somewhat similar to the same comments we heard in Denver at the hearing, whereby we had people recommending a separate commission on Indian affairs be formulated. I am wondering if the two might be coincided or jointly developed. Have you checked this at all?

Ms. SCHEIRBECK. I have not seen the Denver transcript, but I will be glad to take a look at that.

Chairman ABOUREZK. One thing I would like to interject at this point and ask the Commission members to consider, as well as the task forces here, is, if we are, indeed, undertaking a restructuring of the Federal bureaucracy vis-a-vis the Indians. It seems to me we have come to some kind of consensus already. It has to be along the lines of an agency that would serve as technical assistance to the Indian people and not as an agency that makes policy and decisions.

I think that is out of our hearings and the discussions we have had, that is a fairly accurate consensus. If that is what it will come down to when we write our final report, I personally see nothing wrong with separate funding agencies in separate areas dealing with Indians.

For example, in education, and this is a concept my staff and I developed on Indian housing, for example, which we want to deal with at some point as well, but right now, tribes who want to have a housing project have to go through three separate bureaucracies: HUD, Bureau of Indian Affairs, and HEW, or the Indian Health Service. It is almost insurmountable at times in trying to get a housing project put on a reservation because of that.

We developed a concept of a national Indian housing authority, however you want to set it up, through election, through appointment, whatever is the best way that would be responsible for funding, for going to Congress for Indian housing each year.

The only intervening bureaucracy between the housing authority and the tribes would be a tribal housing authority, whose responsibility would be to submit its request to the national housing authority.

You have done away with the bureaucracy, you have set up a funding organization that can apply to the Congress for funding, and you have hopefully achieved, cut out the middle man to serve the Indian people. Would you agree with that?

Ms. **Scheirbeck.** Yes; to cut out the overhead and organize some planning so in a 5-year span, for example, you really can see facilities in that community. That is the concept we are coming up with.

Chairman **Abourezk.** I, personally, think it is a good concept and I am glad that may be one of your recommendations.

Commissioner **Deer.** Is your task force going to have any documentation on the schools that already exist? I think this is a controversy that is going to continue with us and I would like to have some concrete data.

Ms. **Scheirbeck.** We are handling this in several ways. I did not feel the testimony they gave us in Denver was adequate. I have asked them to develop a special set of papers on all of the schools. I have asked them to give us some insights on the quality and achievement level of the students.

One of the things that has disturbed me most about our hearings, everyone is so into looking at administration and financing, we are losing sight of the quality of Indian education. The quality of education our children should be getting—no one is looking after quality, we are all running after dollars and fighting bureaucracies. I have asked them not to concentrate on the costs, but what is it their schools are doing that can show us the difference it makes in the child that graduates.

We have also got a number of Indian people as volunteers, writing papers for us, Indian educators working at the local level. We have asked public school superintendents, for example, Indians and non-Indians, to write up their whole experience of Federal programing in the area.

We hope to take the community insights of the public school, and mesh them together in our policy recommendations.

Chairman **Abourezk.** If there are no other questions, thank you very much.

Ms. **Scheirbeck.** I would like to add one other thing. I want to bring this insight to the Commission. I have participated in the terminated and nonfederally recognized hearings, and the urban hearings, as well. I have been impressed as I have asked Indian people how they think Indian should be defined for purposes of policy. We have asked the question about the Federal obligation: Is there one; what do you base your answer on; et cetera?

I have been told by many groups of Indians that communities, tribes, and organizations do know who the Indian people are and it makes sense to organize a general policy which has broad parameters defining that. Then say it will be the local people who make that definition.

One of the things that has really bothered me is the mockery that has been made of the definition of Indian in title IV. It made us into a laughing stock around the country. I do think we have to seriously address that problem in a very equitable way.

Chairman ABOUREZK. I hope you will do that.

Ms. SCHEIRBECK. We will certainly provide you with that. The other point I want to make is a point, not only about my own task force but other task forces. We are all running out of money, it seems. I think it is important to the people who collect this data, who have an opportunity to write it up.

I would encourage you to help my task force and any other task force that needs to keep their members on for the last 2 months, to find a way to do that. You hired us because we brought a special expertise and that expertise should be utilized in writing the final task force reports. Thank you very much.

Chairman ABOUREZK. Thank you. Task force 6.

## STATEMENT OF ALLAN CAYOUS, TASK FORCE SPECIALIST, TASK FORCE NO. 6

Mr. CAYOUS. My name is Allan Cayous. I am with task force 6, the task force on Indian health.

Chairman ABOUREZK. When is your report due?

Mr. CAYOUS. August 3.

Chairman ABOUREZK. Will it be finalized by then?

Mr. CAYOUS. Yes; it will be finalized by then.

Chairman ABOUREZK. Can you describe your objective?

Mr. CAYOUS. Our objective is to determine the level of Indian health in comparison with the general population in the United States, to review the piecemeal health delivery system for Indians throughout the United States, and to identify the deficiencies in the system and make recommendations for changes in the health care delivery system.

Chairman ABOUREZK. Do you have anything in the way of preliminary recommendations you have come up with?

Mr. CAYOUS. The basic thing we have to deal with is the fact that there is no health care level identified for the American Indian. Basically, at this time, health care is delivered on the basis of dollars. It is not delivered on the basis of health or need.

This has a two-edge effect. Basing health care on dollars leaves the Indian without a knowledge of what he may receive. He may find his health care cutoff on the basis of the fact that the organization has run out of money or that money has been programed for specific health care programs and his needs may be in some other area. So, as long as we base our health care on dollars, and not on health and need, we cannot provide a comprehensive program or provide a good health care program for the Indian.

Chairman ABOUREZK. Are you going to recommend different higher funding levels or is there some other recommendation you will make?

Mr. CAYOUS. We will have to basically recommend a higher funding level, in that IHS itself has stated they are only meeting 70 percent of the health care needs of American Indians right now based on their funding. Since they are only providing health care for half of the Indian population, we will have to go to a higher funding level, since we feel eligibility for health care should be extended to the Indian currently not taken care of by Indian Health Service.

Chairman ABOUREZK. They are mostly urban Indians.

Mr. CAYOUS. Right.

Chairman ABOUREZK. Are you satisfied with the Indian Health Service organization as it exists now?

Mr. CAYOUS. No; we are not satisfied.

Chairman ABOUREZK. Will you make a recommendation on how that should be reorganized, if it should be?

Mr. CAYOUS. Yes; a specific impact study is going on at this time.

Commissioner WHITECROW. Are you looking at the provision of health care to urban and metropolitan Indians in any way?

Mr. CAYOUS. Yes, we are; we have a consultant who is currently putting together a study based on the urban need and urban systems in existence at this time.

Commissioner WHITECROW. Are you looking at the possibility—I may be wrong, I may be in error here, but it is my understanding that if there is a deficit at the end of the operational year of Veterans' Administration health care programs, the Congress appropriates whatever money is necessary to take care of the deficit spending.

If this is true: Are you looking at it from that standpoint, as far as making recommendations to this Commission?

Mr. CAYOUS. This is one of the recommendations that has come out quite strongly. The fact that we are tied to dollars, when we run out of dollars we know we can't provide any health service.

We have looked at the Veterans' Administration, we have looked at the military, the Army, Navy, the Air Force, they don't run out of money. They get more money to provide health care, the Indian Health Service does not.

The approach we take is we should have the same open-ended funding, the deficit for health care should be taken care of by supplemental funding by some mechanism.

Commissioner WHITECROW. Are you looking at the possibility of having some system standardized for identification of an individual's health history, as an example, with the Veterans' Administration, a type of identification card that establishes and provides, almost at a moment's notice, an individual's complete health history. Are you looking at it from that standpoint?

Mr. CAYOUS. We have two prototypes. On one of the reservations, we have a pilot program of about 1,000 people involved in that experiment in Alaska—health history, health records. If this could be expanded beyond their pilot or demonstration program phase, I believe we would be able to take the best or at least take the system with the bugs out of them and expand it for the entire Indian population.

Commissioner WHITECROW. I did attend the Portland hearing and was quite impressed with Dr. Dan Press' recommendations and his testimony. Dr. Press is the director of public health for the State of Oregon. I was quite impressed with his testimony.

I would like to ask you whether or not you have considered any of his recommendations in formulating your recommendations for your task force?

Mr. CAYOUS. I have not seen the recommendations themselves. If we have them in our file, as we progress into the final phases of writing the recommendations, we will be using all of the information we have.

Commissioner WHITECROW. I would certainly urge you to take a look at his recommendations. He did make some very pertinent recommendations to overall Indian health.

Chairman ABOUREZK. Other questions?

Commissioner DIAL. Yes. Do you feel that there needs to be some kind of health program for terminated and nonfederally recognized people or do you feel it would be better to work in the framework which exists in health care programs?

Have you really looked into this? Do we need some dollars to supplement our health programs?

Mr. CAYOUS. We have looked at the other health care programs throughout the United States. The thing we run into constantly is: The Indian is not receiving his share or is not participating in the programs. He is denied access to many of the programs, or is not informed about the programs.

The Indian, basically, is not really included in much of the planning, is not provided access to these other programs. Our basic feeling is that there should be an identified program for the Indian. The Indian should be made aware the program exists; he has certain rights in these programs; he will not be removed; he will not have to fight a non-Indian hierarchy to get to it.

Commissioner DIAL. Is he falling down where poor whites and blacks fall down?

Mr. CAYOUS. We have many reasons given us. Many of the Indian people will not return to a facility for service.

Commissioner DIAL. I am speaking of nonfederally recognized people who do not have Indian Health Service available. You have not gone into this; have you?

Mr. CAYOUS. No; we have not.

Commissioner DIAL. That is all right. Ignore the question.

Chairman ABOUREZK. If there are no other questions, I want to thank you very much for your report.

Task Force 8?

## STATEMENT OF ALFRED ELGIN, CHAIRMAN, TASK FORCE NO. 8, ACCOMPANIED BY JAMES BLUESTONE

Mr. ELGIN. I am Al Elgin, chairman of Task Force 8. With me is task force specialist James Bluestone.

Chairman ABOUREZK. When is your report due?

Mr. ELGIN. August 17.

Chairman ABOUREZK. Will you have it handed in at that time in final form?

Mr. ELGIN. We are running into difficulty at this point.

Chairman **Abourezk.** Does that mean you won't have it handed in?

Mr. **Elgin.** As of the 16th of this month, our task force will be out of funds. We anticipate a task force meeting the 28th, 29th, and 30th, to review our final report. But as of this report, I will be off the staff, and as of the 30th, Jim will be off the staff and we will be broke effective the 16th.

Chairman **Abourezk.** Ernie, Al just said they have run out of money this month and they won't be able to get their report in.

Mr. **Stevens.** I just talked to them about it yesterday.

Chairman **Abourezk.** Have you come to any resolution of it?

Mr. **Stevens.** No. Let me say this. I just got through talking about it. I have talked with a couple of task forces to see if they will give up some of their money and I think they might have some, but I would like to have an opportunity to think about it.

It is like the education task force. I would like to say that some of these people get a budget, they get an increase in budget, we don't interfere with their work, and we let them do anything they want to.

When they run out I have to give them some more money, and I don't know if I have the money to give them or not, but if I have, I will give it to them.

Chairman **Abourezk.** Al, what was your original budget figure?

Mr. **Elgin.** It was $105,000.

Chairman **Abourezk.** Have you spent all of that?

Mr. **Elgin.** We have spent all but $4,300 of it.

Chairman **Abourezk.** When you run out on June 30, you will use up that $4,300?

Mr. **Elgin.** Yes.

Chairman **Abourezk.** What was the reason for having used it up so fast you didn't get your report done?

Mr. **Elgin.** Looking back over the anticipated work we involved ourselves with, we thought that the primary purpose was conducting field hearings and getting the message out to the people and hearing what people have had to say.

The primary emphasis of our task force has been to conduct 12 field hearings, with a 13th hearing to be conducted here in Washington, which we have now virtually postponed and essentially, since last week, we have canceled.

It was the purpose of our task force to conduct those hearings so we would have field information reports. The second problem with the budget is we have had total participation of our task force. Out of 12 field hearings, I have attended 11 of those hearings. The other task force members have been present 10 and 11 of those hearings, so we have had total participation of our task force for several months now.

That is one of the reasons we have utilized a lot of our budget.

Chairman **Abourezk.** Max just handed me a budget figure. You spent, salary for task force members, $37,500; for consultants, $26,580; for travel—I am reading out of the wrong column.

You have spent on salary for task force members, $37,945.04; for consultants, $13,620.18, plus $6,652.35; for travel for task force members you spent $25,370.96; for specialists, $7,246.74, and for consultants, $1,650.96; with hearing expenses of $2,653.90.

I would like to see a comparison with a number of other task forces.

On Task Force 1, just handed to me, the salary for task force members is $25,000 compared to your $37,000. The consultants, $12,000 compared to your $13,000; $7,000 compared to your $6,000. I am using rounded off figures.

On the travel, I guess that is where the discrepancy comes in. Travel on Task Force 1 is $8,400 compared to your $25,000. That is apparently where the big jump came in.

Mr. **Elgin**. The very nature of our task force, Senator, is that we have been saddled with the responsibility, primarily, of all urban Indian problems. Secondarily, it was divided between our task force and Task Force 10, to satisfy this Commission with the information that is necessary to take care of urban, rural, nonreservation areas, which is a different kind of complex situation faced by any other task force.

When we sat down to write our scope of work, to identify the kind of problems we would encounter and try to define the kind of role our task force would be assigned to complete, it was thought, without getting out and feeling the community or finding out what the real community needs were, we came up with primarily task force hearings that we wanted to conduct.

We found, after consultation with our task force and with those primary concerns, that we could not minimize certain areas of the country. So, geographically we had to identify certain areas we had to get to and it turned out that 12 was not even an adequate number.

However, we were given a budget of $5,000 to conduct hearings and we took that $5,000 and found a way in which we could conduct 12 field hearings to interview over 80 Indian urban organizations, 200 individual Indians involved in programs, trying to identify the problems they are having with Government and Indian policy. This has been the emphasis of our task force.

Chairman **Abourezk**. Where were those hearings held?

Mr. **Elgin**. In Phoenix, Ariz.; Los Angeles, Calif.; San Francisco, Calif.; Seattle, Wash.; Billings, Mont.; Oklahoma City; Omaha; Chicago; Minneapolis; New York City; Tulsa and Denver.

Chairman **Abourezk**. Is that 12.

Mr. **Elgin**. Yes. Our 13th hearing was to be held here in Washington, D.C.

Chairman **Abourezk**. Did you go to rural areas?

Mr. **Elgin**. Only in Oklahoma. The nearest to the rural areas was Tulsa and Oklahoma City.

Chairman **Abourezk**. It was pretty obvious where you ran over your budget was in travel. It is water over the bridge now, but I wonder if it might not have been better to pick representative urban areas.

Obviously, you can plan your travel budget ahead of time. You can pick representative areas, you can get the same feeling instead of going to each one, knowing you would run out of money eventually. It seems to me that might have been a better way to do it.

Mr. **Elgin**. That is part of our problem too. There was no representative area for urban concerns. We could have picked one and called that representative, but the areas we have gone to are different in nature. You find the city of Los Angeles—the Indian population—as compared to the city of Chicago, yet the atmosphere and environment is entirely different. Or you go to some areas that have been relocation centers, having a different set of problems than other cities not exposed to that kind of Indian involvement.

Or the migration problem of Indians in the cities, the areas we could not get to in our hearings such as Salt Lake City or Rapid City, S. Dak., or even Albuquerque, N. Mex. and other key cities we felt were important to give us a reflective view as to what urban problems are——

Chairman **Abourezk**. Did you find the problems of urban Indians that much different from city to city?

Mr. **Elgin**. The problem remains the same. If a man is hungry, he is hungry wherever he is. The set of circumstances as to how he got into that particular situation, maybe the causes, and the problem areas we need to get into.

Chairman **Abourezk**. What I am getting at, Al, it is hard to really believe the problems are that much different from one city to the next, that it would require going to every city to find out what they are.

Wouldn't you know from your own experience they might be fairly similar?

Mr. **Elgin**. Yes, but taking that a step further, it has been the admonishment of the staff director, Mr. Stevens, that we should have contact with the people. That has been one of the priorities of our task force.

Chairman **Abourezk**. Actually, the ideal situation, of course, would be to contact every urban Indian, but there is not enough money in the world to do that. So, there will have to be some kind of self-imposed limitation put on yourself. I am not here to sit here and tell you how you should have saved money.

Every task force member knew at the outset we only had so much money to spend and that we were not going to ask for any additional money. I think we are going to have to make some provision to finish this report. I will have to get together with the staff to do that. I personally am going to be opposed to pouring any more money into that task force. I would like to hear some more opinions here.

Commissioner **Dial**. I would like to speak to it. I can see where he is traveling and I can see, as compared with Task Force 1, where some task forces would have a high total spent, where there is a low one for others. His probably runs low in some areas.

Some task forces can go to the library and do lots of work. Other task forces, like Terminated and Non-Federally Recognized Tribes, have a whole lot of hearings to hold and find the people.

This whole idea of a Commission study, I believe, it came about in a hurry, and I think they have all done well with their money. I haven't studied each budget.

At the end of a year on a university campus, you always have conflict, problems, people unhappy, and this one saying this and a little trouble here and a little trouble there. This is really no time to deal with that.

I see some of the wrong existing here among the task forces of the Commission, the core staff and what have you, but what I am really saying, I believe overall we are getting some good work for our money.

I also believe, overall, when the final reports are in, that all of us are going to be very proud that we had a part in this. I would hope that dollars would not stand in our way too much. I know we cannot go back and pick up $2.5 million again.

I would also like to say while I am speaking, I personally see the need for one task force member working until the Commission report goes in. Here you have something thrown upon you until it goes to the Congress. You say, I wonder what this was intended to be and maybe someone is vacationing in Hawaii or New Zealand and it seems to me we get the best out of our money.

I know we have to take care of Al's problem there. I am all for it, and he hasn't spoken to me about it. Also, for trying, in some way, to have one employee from each task force to work with the Commission until January 20, if we could possibly come up with the money.

I know you have a staff, but this would be well if you could coordinate the effort in harmony, that would be the best money you could spend. That is all I have to say.

Commissioner DEER. Before you undertook visits and hearings, did anyone review the hearings of the National Council of Indian Opportunity and do an analysis?

Mr. ELGIN. That was being reviewed simultaneously as our hearings were being accomplished.

Commissioner DEER. I would tend to agree with the Senator, that many of the urban situations are somewhat similar.

Again, it is water over the dam. You have to deal with the problem as it is now. I think we do need a report, but I think this is something that should be brought out. There are different methods for getting the information. It is not necessary to go to every community or reservation to obtain it.

Chairman ABOUREZK. I wonder if I might read from the third quarterly report of this task force, and I quote:

> At this time we have two statements in regard to the trends in relation to movement of Indian people into urban areas and the Phoenix Indian population major problems and/or needs. The Phoenix Indian population problems and/or needs are similarly reflected in other cities of the country where there are sizeable urban Indian populations.

It seems you have already drawn the conclusion that they are very similar in that report. We are going to have to have a report somehow. Before we do that, I want to ask if there is any other comment by Commission members on this issue?

Commissioner WHITECROW. One of the serious problems I see here is the fact that when we began, we established the same budget for each of the task forces, and also as we got into it, we had to make some modifications to each of the budgets in some regard, up or down.

We also asked the staff to be sure we expend these moneys appropriately and properly. Understandably, we are going to have some task forces running short on funds, some will be long on funds, and our director would be authorized to pull moneys from this task force to boost up another task force when it was justified, but I think we need to take a look at our hole card to make sure we have enough money to last the whole year.

We have a staff we have got to take through June 30 next year, and we have several Commission hearings that are going to have to be conducted in the coming 6 months, prior to our report to the Congress.

I am in complete sympathy with providing enough money to put forth this report. We must have that report. If it is necessary to hire a consultant to do so, I think that would be an absolute must. I think we ought to instruct our director to make every effort to try to provide funds and I think he has already indicated he would try to do so.

Chairman **Abourezk**. Louis, do you have anything to comment on?

Commissioner **Bruce**. No, but I am very pleased to be in accord that we will still have a staff person left on to complete that report. It is unfortunate we did not sit down with you and map out these hearings, where they should be held, who should go, and so forth.

I attended some of those, they are similar but there are definite answers that have to come out of this, definite recommendations and you have them all written down here. We can't let you go far away or the rest of the staff, without looking at that final report. So, I urge that we look at it very seriously.

Chairman **Abourezk**. I would like to ask the staff director to speak to these points we have been talking about.

Mr. **Stevens**. The reason I didn't quickly give in, like I have done in the past, is because I want to get some things aired here.

We have elected people and I have elected people underneath me and over me. I hope you can appreciate what that means to me and I handled it the best I can.

Al and Jimmy are two of my best friends and I intend to take care of them, but before I do I want to get some things straight.

You Commissioners are the one who told me 3 months ago I should deal with these task forces and I do not want to because they are my friends. I want to be the good guy.

The reason I am belaboring the point is because whenever somebody comes to me and asks me for something, I try to accommodate them and I do and everybody knows it. After we have decided what to do, I don't like the idea of them going public with it. One of the task forces has never even applied to me for money.

I want to reserve the right to decide whether I am going to give it to them or not. I really mean that. The one meeting we get here, the Commissioners tell me, you are the boss, put it to them and today I couldn't get one task force to even submit a report and they are not going to submit a report.

Chairman **Abourezk**. Which one is that?

Mr. **Stevens**. It is Task Force 10. If you will look in your manual on page 152, you will see that last spring we decided everybody had to do preliminary conclusions and recommendations and I had to sit here today and have somebody say they agreed with the task force and they didn't have to come up with preliminary conclusions and recommendations.

All I am saying is if somebody wants to change the ball game, that the Commission will direct me to supply the money if I have got it, otherwise I want to exercise the prerogative of deciding. That is all there is to it.

As to the other thing, I will deal with that in advance. Adolph and others told me privately and they stated it here, they thought I should have been able to pick some of these people. I am not saying I didn't have something to say about them.

When Commissioner Dial suggested we supply one from each task force, it looks to me like it is going to be another election or it is coming up to be something else.

What I opt for is for us to take the best staff. In some cases, we have three people on one task force who are better than the rest. We have other task forces where they don't have three between them that can write out something.

So much for that. I just want to say that the only reason I belabor the point is because if somebody comes to me and if these two fellows here can say they came into my office, we worked out something and we agreed we would do it that way. If we didn't do that, I will give them the money right now.

Just ask them if we worked it out, and we decided on something, and I told them I would help them.

Commissioner DIAL. I would like to respond to that.

Chairman ABOUREZK. Go ahead.

Commissioner DIAL. I would like to tell you, Ernie, I believe I did tell you, as a staff director you are supposed to run the ship and I agree with that. I don't take it back, this is what I agree with.

I am not saying you are responsible for these gentlemen running out of money. I am only saying he is out and he needs more money. Responding to what you said on the suggestion I made on the task forces of another worker, I tell you, Ernie, the reason I said that I can see where, with busy Congressmen and a busy Commission as a whole, with a staff, if there is not input from a task force beyond a certain date, and this would be true if I were working in that, that the final report will be too much for whoever does it in the office, whether it be Kirke or Ernie or John Brown or Mary Green or Adolph Dial.

I think this will be a weakness in the whole thing, with all respect to Ernie. I feel this is no time to get hung up on deciding whether people are doing a good job or whether they are doing a poor job or whether people are good leaders or whether they are poor leaders or not.

Now is the time when we cooperate and finish the task. If we get hung up on this thing, we might as well talk about them some. If I hear them all over the place, we might as well discuss them here. All of you know what I am talking about.

I am simply saying in order to have a good final report, we have all got to work together. This is all I am saying, I am not trying to take up for or defend anyone. When something is due, it is due.

Chairman ABOUREZK. I wonder if I might say a couple of words on this whole subject. As chairman and the father of this legislation, I guess what I particularly desire and what I want to see is a study of recommendations that would affect radical changes, traumatic changes in American Indian policy. I think that is the only way it can be done.

If we are going to be cosmetic about it, we might just as well not have organized this Commission at the outset. In the process of doing that, when it goes back to the comparison between a democracy and a dictatorship everyone says in Chile there is no crime on the streets. That is right, there is no crime on the streets, but there is also no personal freedom. In Greece, when the Junta was in charge there, there was no crime on the streets.

Many people tell me it was safe to walk down the streets, it is not safe in Washington, yet we have somewhat of a democracy—now that Nixon is gone—here in Washington. The same is true throughout the United States.

I personally could have hired a staff or Lloyd Meeds could have hired a staff and directed what the change in the Indian policy should be. But to me, making the trains run on time is not nearly as important as really sincerely and honestly, participating in a democratic process in a democratic system.

That is why we opted in the legislation to expand the Commission beyond just a Senate Commission. We said it had to be a House/Senate Commission and then we said it had to be a House/Senate/Indian Commission and I wish I had time to relate to you the process in which this Commission was born, but that is essentially giving you the stopping points along the way.

When we decided upon that, we also decided together that we would select Indian commissioners in a certain way, and that was done to the displeasure of some people around the country.

Then we decided we would select task force members in a certain way. That was done in a democratic process. In addition to that, I have personally taken it upon myself, as chairman of the Commission, to deal, almost on a daily basis, with the staff, with the staff director, the chief counsel, and the finance officer, on issues that come up each day. Issues on which it would be impossible to contact every commissioner, every day.

Everybody understands this, the way it works, that is the way it has got to work. In that respect, I have always had a firm belief in the staff that worked for me and, of course, you can't say go out and bring back a report. That is not going to work. Human nature will not allow it.

So, I had to strike a balance of sorts, along with a democratic process where we would allow everybody the maximum freedom of action, freedom of thought, to bring in Indian participation in this final report.

I gave maximum freedom of action to the staff director, consistent with the overall policy set by the Commission. I don't believe we have ever gone outside the limits of policy set by this Commission.

In addition, I have told the staff director that he should, in effect, run and coordinate the task forces along those same lines. That they should have total freedom of action, understanding some people to be better at certain things than others.

We knew, at the outset, some task forces would probably overspend, others would underspend, some would work harder than others, that is human nature too. It is not evil, it is not bad, it is just human nature. It is one of those things.

I want to say that what Ernie Stevens has done has been at my direction and I think my direction has come from guidance from the entire Commission.

I know personalities enter into a lot of different things. I like Al Elgin very much and Jim Bluestone. What this has amounted to has nothing to do with personalities.

Commissioner Dial. Not a bit.

Chairman Abourezk. Not a bit. We do have an extremely important piece of work to do. I don't want personalities to be involved in this.

When I say Ernie Stevens is following my direction, I mean that. He really has. When he has come in and said we have had problems with some of the task forces, and I will say to Ernie: Do you want me to handle them or do you want to do it yourself?

When he tells me he is capable of handling it, of course within our guidelines, then I think he is entitled to that freedom of action.

We have given a method, a semblance of self-determination to these task forces. This particular task force, the Urban Task Force, if they have failed to operate their budget properly, I don't consider it an evil thing or a bad thing. I just say at some point we have to draw our line and say, look, you have had an opportunity, we don't have two chances. We can't catch the allegorical ring the second time around. We are just not able to do so.

All of you know, everybody in this room knows, Indian affairs are a very low priority with almost every Member of Congress. You don't know how lucky we were to get $2.5 million to finance this study. Lloyd Meeds will support me on that. I think he understands it, simply because of his dealing with politicians in the Congress. Politicians deal with votes and there are no votes in the Indian community. That is exactly what it amounts to.

If we are out of money, we are out of money, that is it. We are in a position where we cannot continue to overspend our budget. I think the staff director is to be commended for dealing with this situation the way he has.

If he doesn't understand we are to get a report out of this, I will direct him to do so. I think everybody will agree we are going to have a final report, but I am going to leave it up to the staff director unless I am directed otherwise by the Commission how to get that final report out.

I do not know, exactly, what we ought to do with this question of leaving one task force member on the payroll until the whole thing is finished. I got the indication when Ernie spoke a minute ago, he has a way to finish up these tasks force reports with a smaller staff and if I understand it right, Ernie, you are going to do that without changing the thrust of the reports themselves, in fact, you cannot change the thrust of the reports themselves. Only the Commission itself can change that thrust, is that correct, Ernie?

Mr. STEVENS. We are not going to change the reports at all.

Commissioner DIAL. How many people are you planning on using to finish your work?

Mr. STEVENS. Do you mean the task force work?

Commissioner DIAL. How many people do you have on your payroll when the task forces are completed?

Mr. STEVENS. I don't know.

Commissioner DIAL. Roughly, I will give you five or six.

Mr. STEVENS. Twelve, not counting secretarial.

Commissioner DIAL. Twelve, not counting secretarial. What I was saying, Congressman Meeds, while you were out, some money well spent might be that one person, or some person, of each task force stay on the payroll until it goes in—say until the 1st of January—so the direction and what it was intended to be would be there. Not the degree to which I was driving at, but I am not going to make a big debate out of this.

I am not a Member of Congress and I don't know how you get money, but I was assuming, probably too much I guess, maybe from what I read in the newspapers, we could get a little money to finish the most important study in American history.

I get disturbed very much, Senator, when I read the money that goes to this and to this and to this, nothing that you have anything to do with, and then we come out with such a very important study and we can't get a few thousand dollars. This really disturbs me.

Chairman **Abourezk**. Adolph, can I break in a few seconds there? It has disturbed me for so long, in order to retain my health I have stopped being disturbed about it, otherwise I would have a mental breakdown.

All of us kind of assume a thick skinned character around here, otherwise you would go crazy if you didn't. In looking at the priorities of Congress, they are not very good. What I see daily and vote on daily and vote against, for the most part, are programs in the areas of defense spending, foreign aid, so-called space shuttles and other areas. I think they are a waste of money. I sometimes come to tears to think that $40 million or $60 million might bring Indian health up to a level with everybody else and we cannot get it. I am with you, except I am probably beyond the point of total outrage you are at right now. I was at that point a few years ago and have gotten over it just to save myself.

Commissioner **Dial**. I am very calm.

Chairman **Abourezk**. So am I.

Congressman **Meeds**. Let the record show the gentleman is calm.

Mr. **Stevens**. What I said before was I don't like the idea and in at least a couple of cases the people did not ask me for it, and that was the only problem I had with it.

What I am doing right now and I think I can explain it, is that we have notified a number of people and we are cutting certain budget line items right down the line. We are starting out with the people that are working in support and in administration within the Commission.

We are plotting it out to next spring, literally. I am right in the middle of that. When people are coming to you and I have already told Max and Kirke privately, wait a couple of weeks, let us get this thing straightened out. We have to make some reporting. We have a report right now related to that, that is a halfway report. It is a program report and an administrative report. I am caught in the middle of all of that. All I want is some time. I have told Al I will help him finish.

I don't want to infer we don't have the money. We do have the money. We can get the money. The only other thing I was trying to do is if we are talking about retaining some people, like I tentatively asked some of the task force people if they were available to help us, to stay on and help us with the Commission report.

In order to determine how many we can keep, we have to see how much money we can save. There is no doubt in my mind we can come down to August or September at a savings to the Commission.

I just told Max and Kirke I want all consultants—we have had consultants opened up for 45 days and I want those all closed down, everybody is on a fresh deal. I want to find out which consultant is handling which task force.

All I want to do is wait until we have evaluated that and, in general, we will see to it that Al and Jimmy finish their report. I don't have any problem with that. I was wanting the Commission to say I could sit there at night and help them write it myself, or whether we will give them $2,000 or $3,000 to put on some more time or have a consultant do it, that was what I was trying to say.

Chairman **Abourezk**. What I would opt for, if I could say this to the members of the Commission, is to continue to allow the discretion in those matters to rest with the staff director.

If we don't want to do that, we are going to have to change that particular decision right now and say whatever different policies we want to undertake, but I would like to see the policy stay the same. It does involve shifting on-the-spot basis and making certain we stay within the budget. We have some very good people on the core staff who are handling the budget, who are doing it in a responsible manner, and I would like to continue to see that, if the Commission will support me.

Commissioner **Dial**. Mr. Chairman, basically, I agree with what Ernie is doing. I feel that in a tight situation he is doing a very good job. I would hate to tackle such a task, it is a very difficult task.

What I am really saying is that we have the problem here of budget. A few dollars and I am not saying we should take any authority from Ernie, I have not implied this the whole day and I never will. I am an old sergeant of World War II and I think, basically, that is my way of running business.

I have spoken and I am not going over it again. If we could use the members of each task force to help out in the final report, if we can find the money, I believe that would be money well spent. Or, if you could use them for a few days after the report is in, maybe 4 or 5 days, 7 days, 10 days, and say: "Is this what you intended it to mean? Here is what we have done with this, is this your interpretation"? They can take 8 to 10 days to say, really what we meant is this.

Chairman **Abourezk**. One thing that will fulfill what you are talking about is, as the Commission goes into its markup session, certainly we will have to call in one member of the task force or the specialist or whatever, to sit with us to markup that report. I think that is anticipated. Is that correct?

Mr. **Stevens**. Yes.

Commissioner **Dial**. That is very good.

Chairman **Abourezk**. That is essentially what you are talking about, that was anticipated by the staff.

Commissioner **Dial**. If you are going to take the core staff and write up all the reports, and the Congressmen here, if they don't spend lots of time with it, and our 11 Commissioners, we are going to have a second, indeed, report. The report may not reflect what it is supposed to be and this would be the same if I were there or you or any person in the world. Do you get my point?

Chairman **Abourezk**. Yes. Any other questions of this task force?

Mr. **Elgin**. I have some comments. When we first started you asked me if I had any difficulty with the report and I said possibly. At no time have I asked for money, and at no time will I get on my knees to ask any Congressman or Senator for money. I am not of that dignity.

We did go to Ernie to relay our budget needs and find a solution as to how we are going to complete our report. Our solution is that

Jim would go on full time the rest of this month or I would go half time up to the 16th when our money runs out. I will stay on the staff and do that work up to the time we possibly can get our report together, hopefully by the end of the month for review by the task force.

I think it is necessary for the task force that has been involved all this year in compiling this information, to review that report. We have set that as a priority, so we might meet in Oklahoma City the end of this month.

Jim and I will be enroute home at that time. As you know there is no money to get there, Jim and I live in California. We will terminate our services at that time. Hopefully our report will be completed at that time.

When I answered your question I was truthful to the fact we may have difficulty in finishing at that particular point. We worked out solutions with Ernie's office in which we might find a way to polish that report or have it in the manner you legislators can read it and understand what we Indians are trying to tell you and we may be able to do that in another kind of fashion, I don't know.

One of the difficulties I had with one of the plans was this: We turn work over to a consultant to put into a final report, so that report would be available to you on the due date.

I have one difficulty with that. In no way am I going to be involved in something for a year and turn it over to somebody else to make the report, that they can speak for Indians. I will have none of that.

That is what I told Max and that is what I go on record as saying here today. If it needs be, I stay here without salary. That is my problem, it is not your problem. I don't want you to feel I am asking for money from you people here today.

I am not. I am only stating the fact we may have difficulty in finishing our report because we did run out of money. If you have any more questions to that, feel free to ask, but that is our premise right now.

Chairman ABOUREZK. I appreciate that very much. Any other questions or comments?

Commissioner WHITECROW. Mr. Chairman, I might be somewhat out of order in this particular context of what I am going to say, but I think this is the time we need to consider a situation that is coming up, that has come up and will be coming up quite extensively in the next couple of months.

I am sure our staff has already made the necessary arrangements to provide for good letters of recommendation to go forward for many of our clerical staff, for many of our task force members and our task force specialists. This is a point of concern to me, once we began bringing these highly expert people, highly technical and qualified people on board.

It was very distressing to me that we would have to bring them on board and get this particular quality of people for a short period of time and then release them. Of course, this is coming up now.

I think we need to make some arrangement through this Commission to provide for a letter of recommendation to go forward to all of our staff so we can assist them in finding other employment elsewhere.

Some of these folks will have difficulty in locating other employment. I think we need to give this some consideration. In fact, we may need to give me some consideration.

Chairman **Abourezk**. I think that is a good point. I would have no problem in recommending any of the people who worked on our staff.

Also, at the outset of this thing, I dimly foresaw one of the results, one of the benefits of task forces of this Commission. This Commission's work would be through the national process of research, hearings, and report writing. A new kind of class of American Indian leadership, on a national basis, would merge into view. That that would happen and I think it is happening.

If the Congress passes not one recommendation we make, I think it will still be of a kind of benefit. It is not marginal benefit, it is of great benefit.

One thing the Bureau of Indian Affairs has done over the years has been to make an effort to destroy whatever Indian leadership has emerged. I think we have created a great deal of national Indian leadership, and I am very happy about that, very proud of that.

So, we will do whatever is necessary to provide job recommendations and help people find work.

If there are no other questions, I would like to thank you both very much. Now, task force 9.

## STATEMENT OF PETER TAYLOR, CHAIRMAN, TASK FORCE NO. 9, ACCOMPANIED BY KARL FUNKE, TASK FORCE SPECIALIST

Mr. **Taylor**. I am Peter Taylor, and I am chairman of task force 9. On my right is Karl Funke, our task force specialist.

Chairman **Abourezk**. What is the due date of your report?

Mr. **Taylor**. I thought it was August 18, but it is August 17, we have been shortened by 24 hours.

Chairman **Abourezk**. Will you be able to have your final report in on or before that date?

Mr. **Taylor**. I think it is quite possible we will have the report in on that date.

Chairman **Abourezk**. What are the objectives of your task force?

Mr. **Taylor**. The primary purpose is the review of Indian law, for the purpose of bringing about consolidation, revision, and codification of Indian law.

Chairman **Abourezk**. How is that coming?

Mr. **Taylor**. Our first phase, during the first two quarters, was to develop the format, the technical background necessary to carry out a revision or consolidation.

During the third quarter, aside for conducting hearings in the State of Oklahoma, we have examined title 25, broken it down in different subject matter, components, and resectioned the code into subject matter components.

What we are doing is going through, after developing different subject areas, analyzing the law that falls into these categories to see what the current state of the law is, where the current conflicts are between past law and current philosophy of Federal-Indian relationships, and writing an analysis of what we see.

So, what we are finding, it is not possible to work a consolidation or codification of existing law without revising law already on the books. You have laws that are in conflict.

More significantly, you have broad policies and issues in conflict with each other. We attempted to spell that out in this quarterly report at some length.

In fact, I think this will probably essentially become the introduction to our final report—this broad brush picture.

Within the framework of these different chapters, and we have broken it down into 11 headings at this point, we will make recommendations as to what we think ought to be done with the law.

I would like to make very clear that we are not going to be presenting to this Commission or this Congress a proposed revision of the code set out in the legal draftsmanship form. It is not within the capability of this task force. It could not be done within the lifetime of this task force. In view of the purpose of this Commission and the function of these other 10 task forces, it would not make sense to spend that much time coming in with a technical revision of existing law, when the whole purpose of this thing is to set a new tone. I think we will provide the tools necessary to conduct a codification and revision of law.

Chairman **Abourezk**. You will have it in shape to present to the Judiciary Committees of both Houses of Congress so they can complete the codification?

Mr. **Taylor**. Yes.

Chairman **Abourezk**. I agree that it a very big job, and one we did not equip you to do.

Mr. **Taylor**. I might say, in conjunction with that, what we really have are myself working full time as the task force chairman, Karl Funke, specialist, working full time, and two other task force members. They are only working 3 months out of this year. What has occurred is they have become more in the nature of advisors and consultants, rather than actual workhorses. What you actually wind up with is two guys and it is simply beyond our capablity to carry out the job.

Chairman **Abourezk**. Any other questions?

Congressman **Meeds**. Pete, first let me compliment you on your task force report. I had initially looked upon this as a helping task force.

For instance, as we have seen here today, the question of who is an Indian, the question that almost every task force is called upon to answer in some framework. Have you been called upon by any of the other task forces or consulted by any of the other task forces, as to who is an Indian for any purpose?

Mr. **Taylor**. It has been mentioned in the office once or twice when we had our hearings in Oklahoma. The problem clearly has surfaced, particularly in the area of preference employment, both in the Bureau of Indian Affairs and the Indian Health Service, and the question of services to which Indians are entitled.

There is a definite problem that has been identified in Oklahoma, in that the Bureau of the Census has used one criteria for defining Indians, and the Bureau of Indian Affairs and the tribes use a different criteria. Many of the programs delivering services rely on the census criteria, which is lower than that which the Bureau of Indian Affairs or the tribes identify. So, you get CETA programs that go to the tribe based on the census population determination, but the population is much larger than that.

Congressman **Meeds**. Have you had the cooperation of local agencies in your effort to carry forth you task force's responsibilities?

Mr. **Taylor**. We have not had any trouble. Most of our contacts have been at the lower level. It has been a matter of sitting down and discussing the function of a particular division of an agency.

Actually asking some of these people just what problems they are having with the laws. I think it is common knowledge in this city, many civil servants in the lower ranks are aware of a lot of difficulties in the laws. But they cannot get recommendations for change through the front office. They get to the point where they don't even try any more, but if somebody will take the time to go in and sit down with them and ask: "How is this law working? What complaints have you received with respect to this law?" It may be working fine for him, but it may be a problem for others.

For instance, the Indian Financing Act of 1974, I believe, has a $50,000 limitation. It creates no trouble for the Bureau of Indian Affairs, but it does for the tribes. If you just ask the Administrator what complaints do you receive, then he points it out.

Congressman **Meeds**. Have you dealt with the staff director and the core staff of the Commission?

Mr. **Taylor**. Rather closely, I think.

Congressman **Meeds**. Any problems in cooperation?

Mr. **Taylor**. We have had excellent cooperation with our problems.

Congressman **Meeds**. Have you used the core staff at all?

Mr. **Taylor**. To some extent, yes.

Congressman **Meeds**. Would you estimate the hours?

Mr. **Taylor**. Pulling it out of the air, I would say maybe 3 to 4 weeks worth, perhaps more. It could have been more than that.

Chairman **Abourezk**. Other questions? If not, I want to thank you.

Mr. **Taylor**. We see our basic thrust going to title 25. By virtue of the work we have done, we have had to examine the whole Federal delivery system and we don't expect to confine our comments or recommendations only to title 25, but we do see that as a primary objective. We intend to make additional recommendations beyond that.

Chairman **Abourezk**. Task force 11. I want to make an announcement before we get to you.

The staff has indicated they would like to have another meeting of the Commission sometime in July. We will have to try to figure out a date that is suitable during July.

It will be a shorter meeting than this one. It will be primarily set to deal with the acceleration of problems that are going to be arising on budget, personnel shifting, and so on. Does that present any kind of problem to the Commission members? [No response.]

## STATEMENT OF STEPHEN LaBOUEFF, TASK FORCE SPECIALIST, TASK FORCE NO. 11

Mr. **LaBoueff**. My name is Steve LaBoueff, I am the task force specialist for task force 11.

Chairman **Abourezk**. Steve, when is your final report due?

**Mr. LaBoueff.** August 4.

**Chairman Abourezk.** Will you have it completed and handed in by that time?

**Mr. LaBoueff.** Yes; I will.

**Chairman Abourezk.** What is the objective of your task force?

**Mr. LaBoueff.** A short objective is to look at the aspects of alcohol use and drug abuse. This covers the whole gamut.

**Chairman Abourezk.** Have you come up with any preliminary conclusions or recommendations at this point?

**Mr. LaBoueff.** Tentative ones, those outlined in my report.

**Chairman Abourezk.** Will you give us a briefing on those?

**Mr. LaBoueff.** The preliminary ones, and I think I have brought them out in the second quarter report. Alcoholism and drug abuse have a high stated priority, both with Indian people and the administration, which just came out with a very strong stand concerning drugs. The programs and the priorities do not have the resources. The resources allocated to them do not seem to reflect that priority.

What I speak of is for a reevaluation of the priorities and how they should be applied. The resources brought to bear that would be necessary to help alleviate this particular problem. That is probably the major one I would like to speak to.

**Chairman Abourezk.** You would recommend higher funding levels, is that essentially what you see as necessary?

**Mr. LaBoueff.** That comes along with it. I don't want to come up and say we would like to have more programs, money, and staff. That is an old story, even with the Indian Health Service.

We are talking about a health problem where it would take so many dollars to bring the health level of the Indian people up to that of the rest of the Nation.

I think there should be a major study and establishment of criteria for developing a national Indian alcoholism and drug abuse program. I feel there are good examples by Congress. Many of the programs want to help. You have little programs, little thrusts here and there. I do not think they are well coordinated as far as the native Indians are concerned.

**Chairman Abourezk.** You will have recommendations to correct those wrongs?

**Mr. LaBoueff.** Yes, sir.

**Chairman Abourezk.** Any other questions?

**Congressman Meeds.** Steve, when was your report due?

**Mr. LaBoueff.** My quarterly report was due May 18.

**Congressman Meeds.** When did you get it in?

**Mr. LaBoueff.** I got it in the day before yesterday.

**Congressman Meeds.** Was there some overriding reason for this delay?

**Mr. LaBoueff.** We have two task force members. The other one has not been filled. One of the task force members, the chairman, has not participated to the extent I feel is necessary in this position. In the absence of one of the members, and little participation, we felt it was part of our charge to hold the hearings and the onsite visits. I, myself, conducted three of these particular hearings. I felt this was a necessary part of supporting Indian input. That primarily is the reason it was not in on time.

Congressman **Meeds**. How much time has the chairman spent?

Mr. **LaBoueff**. Very little.

Congressman **Meeds**. That is a relative term. A very little atomic bomb is a lot. Can you give us some ideas?

Mr. **LaBoueff**. Probably since the last quarterly report—with what he has turned in as far as expenses are concerned, I would say 1 or 2 days.

Congressman **Meeds**. Has he been on the payroll all of this time full time, or do you know? Maybe you don't know that.

Mr. **LaBoueff**. I don't know.

Chairman **Abourezk**. What is his name?

Mr. **LaBoueff**. Reuben Snake.

Mr. **Richtman**. He was approved.

Chairman **Abourezk**. He has been on the payroll?

Mr. **Richtman**. He has not been collecting an annual salary.

Congressman Meeds. Have you reported his lack of participation to the staff director?

Mr. **LaBoueff**. Yes; I have.

Congressman **Meeds**. When did you do that?

Mr. **LaBoueff**. Three months ago.

Congressman **Meeds**. How about the other member of the task force? How much participation have you had from him?

Mr. **LaBoueff**. George has been very active, attending the hearings, holding the hearings, and at the onsite visits.

I might say as far as input concerning a task force report, I received very little input. I expect probably in the next 2 months George and I will be spending a lot of time together working on the report.

As you know, the task force has been quite a bit behind due to some uncontrolled circumstances.

Congressman **Meeds**. What are the controlled circumstances, other than the ones you just mentioned?

Mr. **LaBoueff**. If you have a chairman that does not participate——

Congressman **Meeds**. That is one. What are the others?

Mr. **LaBoueff**. I felt if we had not held the hearings and we had spent the time working on the report, we would have had a stronger report. That does not mean that I don't think the hearings were necessary. I do think they were necessary, but they were something we had to get out of the way.

We completed our data gathering and most of our analysis, we have one Federal agency to report, that being NIAAA, both statistics and data, hard statistics like suicides and death rates attributable to alcohol. Now, should we spend the full amount of our time working on this particular report we will have no problem meeting the deadline.

Congressman **Meeds**. Have you had good cooperation from Federal agencies with regard to your reports?

Mr. **LaBoueff**. Relatively so, yes.

Congressman **Meeds**. Have you done any studies of the ongoing programs of the NIAAA, with regard to programs regarding alcohol?

Mr. **LaBoueff**. Yes, sir.

Congressman **Meeds**. As you correctly point out, I think, on page 3, "Here again, we cannot successfully attack a single cause." What has been been your coordination and liaison with other task forces studying other so called Indian problems?

Mr. LaBoueff. I have spent some time with task force No. 6 on the health, because we feel it is a health problem from both a mental standpoint and social welfare. In other words, something Health, Education, and Welfare would talk about. Education plays a strong part.

Congressman Meeds. How much time would the task force spend?

Mr. LaBoueff. About a week. Al and I live close together and have spent some time discussing different issues. I am also an employee of the Indian Health Service and on detail to this particular Commission. I spend quite a bit of time working with the Indian Health Service staff.

Chairman Abourezk. Are there other questions?

Mr. LaBoueff. Can I make one particular point here. The task force report, as it was written—I primarily wrote it and I am not an alcoholism expert. I don't know what it takes to be an expert.

There will be differences of opinion between myself and probably one of my task force members. I expect that. I expect we will have a lot of differences in this particular thing. Out of 160 different alcohol programs, what they think, for instance, of the issue of a possible legalization of marijuana, the possession and usage laws, I think would probably have that many different ways of answering.

This is something we have to discuss and what we will come up with in our report, to the best of our ability, is the recommendation which we feel reflects as many people or opinions as we can get, and this does not mean we are going to have 100 percent of anything. I think that is virtually impossible.

Congressman Meeds. Will you have trouble completing your report on time?

Mr. LaBoueff. I don't anticipate any, no.

Congressman Meeds. Have you used much of your budget for any kind of consultants or specialists?

Mr. LaBoueff. Yes; I have used some of our budget money for consultants. I have one consultant spending quite a bit of time on it now, in the absence of another task force member, and that is Juan Dale. He is holding hearings and some of the onsite visits and will be working with us closely in writing the report.

Commissioner Deer. Can you tell us why we don't have the other members of your task force today?

Mr. LaBoueff. Reuben Snake and George Hawkins are in Sioux City, Iowa, conducting the last of our hearings, which have been scheduled for some time out there.

Commissioner Deer. Will your task force be conducting any review of the literature? It seems to me there have been a lot of studies in this area. A lot of mythology dealing with Indian alcoholism. I would love to hear what your plans are for that?

Mr. LaBoueff. We have two specific studies. One has been kind of aborted lately. Sherry Salway, the young lady sitting here, has been spending the last 2½ months going through all of the material, the different research articles, everything, trying to pull together a synopsis concerning each of those, the pros/cons, cause and effect, method of treatment, methodologies.

We will be putting that together in some sort of a report that deals with this. The second part of it is: We have written letters to five or six people, very strong in psychiatry, mental health, social workers, who have done some work in alcoholism. Some have done some work in alcoholism amongst Indian people.

We have one who was Director of the Office of Research and Development for the Indian Health Service. We had to ask him to prepare a paper, furnish them with the bibliography of that paper, some of the resources, getting to prepare a paper, getting together in Oklahoma City. This was last Monday. I think it was for the purpose of coming together with a not complete agreement, but nontheless, a single paper. We were notified the Thursday before Monday, the committee did not have sufficient information to authorize use of these consultants.

I have no problem giving more information. The problem I am having, we were notified on the Thursday before the Monday it was supposed to take place.

Chairman **Abourezk**. Any other questions? If not, thank you very much.

That is all the business to come before the Commission today. We will now adjourn, subject to the call for the other meeting in July.

Commissioner **Dial**. When in July?

Chairman **Abourezk**. We will have to set a date.

[Whereupon, at 5:50 p.m., the meeting was adjourned.]

# MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

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## TUESDAY, AUGUST 10, 1976

AMERICAN INDIAN POLICY REVIEW COMMISSION,
*Washington, D.C.*

The Commission met, pursuant to notice, at 9:45 a.m., in room 1202, Dirksen Senate Office Building, Senator James Abourezk (chairman) presiding.

Present: Senator James Abourezk; Congressman Lloyd Meeds; Commissioners John Borbridge, Jr., Louis R. Bruce, Ada Deer, Adolph Dial, and Jake Whitecrow.

Staff present: Ernest L. Stevens, staff director; Kirke Kickingbird, general counsel; and Max Richtman, professional staff member.

Chairman **ABOUREZK**. The American Indian Policy Review Commission meeting will come to order.

This is the first of a series of markup sessions the Commission will hold where we will receive reports from the task forces, discuss them, ask questions of the task force people who are present, and take whatever action the Commission sees fit based upon the discussion and the questioning of the Commission people.

The first report that we are going to take up this morning is that of task force No. 1. Hank Adams, you are here to present that?

## STATEMENT OF HANK ADAMS, CHAIRMAN, TASK FORCE NO. 1, ACCOMPANIED BY KEVIN GOVER

Mr. **ADAMS**. Yes; I am here. The task force report was submitted to the Commission a little over a week ago.

Chairman **ABOUREZK**. Did everybody in the Commission get a copy of that report in sufficient time to go over it?

Then I guess we will open up with Commission members who might want to ask questions or make comments about it.

Congressman **MEEDS**. Mr. Chairman, and members of the Commission, first let me say that I have not had an opportunity to read the full task force report. I have only had access to the summary prepared by the staff.

It is not signed so I don't know who did it. I am well aware of the hard work of the chairman of this task force, Hank Adams, and of his capability, but I must say from the limited resources that I have had available to me and have had the time to take advantage of, that I am very, very chagrined with the task force No. 1 report and the summaries that I have seen of it.

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First of all, I think that task force No. 1 went far beyond the original charge—which was a study and analysis of the Constitution, treaties, statutes, judicial interpretations, and executive orders to determine the attributes of the legal relationship between the Federal Government and Indian tribes, and the lands and other resources that they possess.

They got into the field of other task forces. One of their major recommendations is that of a new structure for dealing with Indian matters, which I think was the primary function of one of the other task forces.

I have asked and been informed that there was very little cooperation between task force No. 1 and task force No. 3 whose primary responsibility, I think that the administration should have been.

I find the suggestions and recommendations of the task force at the threshold totally unrealistic in today's world, and the kind of thing which will, if adopted by this Commission, make our task force reports and our Commission report and recommendations almost totally impossible to enact into legislation.

I see no way personally to establish complete economic independence of the tribes. I see no way to return the Black Hills to Indian ownership. I see no way to restructure, as they have set forth, an independent agency at super Cabinet level, a Department of Indian Affairs, or whatever you want to call it.

I see no thorough discussion, at least in the summary, of what the trust responsibility is with regard to tribes, with regard to resources, with regard to individuals. I see no discussion of the trust responsibility with regard to individual allottees as opposed to tribes.

There are just any number of things, at least with the summary of task force No. 1, which I find are unacceptable, and I would hope that after discussion, that task force No. 1, will go back to the drawing board.

I see very little documentation of the conclusions which are reached by the task force. I find it difficult to separate what the law is, from what the writer of the task force report believes it ought to be, and very little documentation for what it is and what it ought to be.

I would hope that after discussion of this matter, we could send task force No. 1 back to the drawing board with some additional people to try to prepare a report which has some realism and with recommendations which have some chance of being enacted into law.

Mr. ADAMS. Just in brief response, I would say that the summary is not a fair review of the report either with respect to trust responsibility, treaties, and discussion of the law either as is or what anyone might hope it to be or wish it to be.

Commissioner WHITECROW. Mr. Chairman, I am wondering here on page 4 of the final task force report—item No. 5—where you state:

> National policy should foster commitments designed to restore Indian tribes to the level of viable economic independence.

In context with the modern national and complex world economy, we are talking about complete economic independence here for Indian tribes. Are you looking at this particular category of position of putting Indian tribes into a state of economic land base?

Are you looking at some method of financing tribal government? Is this a portion of the responsibility as you see it for Task Force No. 1 or should this come under Task Force No. 2 or perhaps No. 7?

Mr. ADAMS. I know that matter is addressed by Task Force No. 7. The terminology, "complete economic independence," came into play throughout the period that we were at Indian Reorganization Act sessions.

It is a term that has its comparison with virtually total economic dependence upon outside moneys, even in situations where you have resource-based reservations that could achieve essentially what would be called complete economic independence at some point in the future.

This was the basic charter of the economic provisions, the economic outlines of the Indian Reorganization Act. Using the terms, "complete economic independence," primarily points out a direction that moves away from the gross dependency that you now find on most reservations, both from the standpoint of economic development and from the standpoint of Government support or Federal support of tribal governments.

So you have the primary industry on many reservations being tribal government, either drawing upon Federal resources as the only source of moneys, or you have that tribal government drawing extravagantly upon all available revenues produced by the tribes.

The Navajos are a prime example: $18 million to $23 million of their resource base of revenues are thrown right back immediately into tribal government. That is not enough to supplement the Federal Government coming in there.

They also have to dip into their trust money reserves for from $5 million to $8 million a year just to run their government. So when it is talked about, "complete economic independence," first it probably is using an inaccurate term, but it is a term that has very strong support with a declared policy of Secretary Ickes, Franklin Delano Roosevelt, and John Collier in 1933.

So I figured it was a safe term.

Commissioner WHITECROW. What I am questioning here, frankly, I have been hearing all around the country with people I have been visiting and have been confronted with in the past. I have noticed that most people feel, particularly, that the Federal Government has a trust responsibility of assuring the protection of lands, whether it be individual or tribal-owned lands.

Also they have pretty well indicated to me that opinion of the trust responsibility also gets into the protection of mineral resources in addition to the absolute certainty that treaty rights are protected.

I don't find in the report here anyplace where it actually defines trust responsibility. Do you have that in your report somewhere?

Mr. ADAMS. Yes. There is one section that deals with it exclusively from legal standpoints. There are two sections that deal with it from historical development and construction and trust responsibilities going back to the early 1500's.

Commissioner WHITECROW. Can you tell me where, in your report, you refer to any recommendation with regard to the continuation of trust responsibility?

Mr. **Adams**. In section 7, the analysis of trust law, and in section 3, which also shows some of the difficulties of just saying that the trust responsibility should be continued forever.

That is implicit on page 3 in both items 1 and 2 as well as 3. The question of permanency as tribal entities—distinct on political communities.

Commissioner **Whitecrow**. Did you, in your report, at any place look into the policies that we have experienced in the past with regard to determination and also the new, current policy of self-determination? Did you look at anything with regard to perpetuity of trust responsibility of the Federal Government in regard to self-determination?

How did you approach this?

Mr. **Adams**. Yes. We approached it probably in four separate places: One, in the discussion or analysis of the law; two, the section that relates to the state of confusion in which the trust responsibility has been as a result of failure to clearly define trust responsibility in the past, and a ready refusal on the part of the Department of the Interior to define trust responsibility in any formal opinion or statement that would then set some standards for itself or set some rules that would have to be imposed on, say, the Department of Interior and all its agencies.

I just picked up a new reading on trust responsibilities, yesterday afternoon, "The Role of the Trustee: How Shall the Government Serve?" by Martin E. Seneca, Jr.

This is greatly divergent from anything else they produced in the last 4 years. It is at great variance with the conclusions that we reached both in analysis and historical definitions of trust relations and trust responsibility or the obligations of trusteeship that are vested with the United States in assuming that capacity.

I would offer this reading on trust responsibility to the Commission because it again just shows how divergent you can be with readings of the trust responsibility, particularly if you want to evade that responsibility.

We have reviewed at least five separate drafts prepared in the Solicitor's Office from 1973 on through this year defining trust responsibility, but being rejected, and again for the presumable reason that the Department of Interior does not want to bind itself to any clear definition of trust responsibility.

I just picked up another document this morning that is from Acting Commissioner of Reclamation through the Assistant Secretary on Land and Water Resources showing the clearest conflict of interest in water guides in the Southwest.

If you act in a manner proposed for Indians, then you will upset all our plans for serving the non-Indian population in that region, making no consideration really of the Indian interest involved, but again pursuing the non-Indian interest and making the strongest case for the non-Indian interest and dismissing the Indian interest without consideration.

When you have a clearly defined opinion—either Attorney General's opinion that will be controlling on the Department, or the Solicitor's opinion that would be controlling on the Department—setting the standards or setting the rules for performance of trust responsibility, then you stop these other agencies from doing things like this.

That is one of the reasons that you had the Veeder statements rejected. You had the Reid Chambers drafts for trust responsibility rejected. You had a number of very sound policy and legal analysis papers rejected by the Department of the Interior on trust responsibilities because they don't want to be bound by standards.

They don't want the Bureau of Reclamation or Bureau of Land Management to be controlled by an opinion or ruling that might be issued either by a Solicitor or an Attorney General that would control them and insist or prevail upon them to at least procedurally act in the right way, even if they come to the wrong result or even if they come to a legitimate result that doesn't meet the best wishes or hopes of Indian tribes. You are without standards there.

Commissioner WHITECROW. Let me ask you another question. Then I will be finished.

In regard to sovereignty: We keep hearing this constantly every place we go, that some tribes have sovereignty to an nth degree, and in other cases that tribes have very small or slight amounts of sovereignty.

When we complete our work on the Commission, if we do determine that a tribe does have some sort of sovereignty to a certain extent, whatever that extent might be: How have you covered this particular fact of activity insofar as trust relationships?

For instance, if it is determined that a tribe does have the sovereignty as an independent nation, I think that possibly would be very difficult to achieve, but in the event it should have sovereignty as an independent separate nation: How have you covered trust relationship or did you?

Mr. ADAMS. First of all, through our historical analysis of trusteeship and treaties, we indicated the formation of the relationships generally was formation of a protectorate or a trusteeship relation. In exchange for that relationship and the obligations it carried with it—both to the United States and to the tribes, the Indian people—that a surrender of some portions of sovereignty is a legitimate price to exact for that relationship of trusteeship and the obligations assumed by the U.S. support.

So we do not claim an external international sovereignty for the separate tribes. Virtually every treaty—not 85 percent of them—particularly declare the dependence of the tribes involved on the United States of America or on the U.S. Government or on the Government of the United States.

And in doing that, in framing or forming that relationship, there is a surrender of some elements of sovereignty, particularly in the first instance, the surrender of external sovereignty.

But it comes with a price to both parties to the relationship. It comes with an assumption of obligations on the part of the United States and it comes with some responsibilities on the part of Indian people or of the tribes.

Also, in our analysis and historical review, we show authority where the trusteeship between the United States and an Indian tribe also is protective of that tribe's retained level of sovereignty or self-governing character or his tribal autonomy as a distinct political society or group.

Commissioner WHITECROW. Let me ask you this question. Perhaps Kevin will get involved in this also. I see the report has no stated actual definition of trust responsibility.

However, it is implied in a few places. The report implies trust responsibility includes a duty of the Federal Government to provide services. In regard to this, particularly in your charge of task force No. 1 with treaty review: When we began taking a look at the return of some powers to tribal government, when we start looking at treaty boundary areas, if we take a look at this particular aspect that is a return of some semblance of a system of government and a reestablishment of some system of tribal government particularly with jurisdiction over some areas. How have you looked at this in regard to private government relationships, with regard to county governments within the State?

Mr. ADAMS. Pretty much on the jurisdictional question, we were saying we have deferred to task force No. 4. However, we do imply—not particularly stated in our report—that there has to be a greater level of accommodation between Indian tribes and State and local governments as well as the United States, and get out of the realm of dispute that has a single finish, and that is the extinction or extermination either of some rights or the complete elimination of their interests.

There has to be a greater level of accommodation between the varying interests, particularly at local levels, but it has to have a different outcome than has been the case when these disputes have come up in the past.

The Cherokees going from North Carolina to Oklahoma and having no place to go beyond that, but having a lot of injuries done to all their lives where they ended up, or a good share of them.

Commissioner WHITECROW. One of the things, Hank, I believe we have to consider here is the fact of local relationships. You know that possibly is one of the ways, as I understand this, of local politics and local pressures being applied for the abrogation of treaties.

I think we still have the same attitude, that we have got to look out for at the standpoint of this Commission. If we recommend something that is just too far out, local politics are going to become deeply imbedded, and there is a very good possibility that we could bring about a great amount of turmoil and a great amount of personal problems within a community.

I think our trust relationship here has to enter into this aspect and make it very clear to the entire community what the trust relationships are. To give you a general idea of what I am referring to here: I have had many people come to me and ask me, "Well, what happens in the event this Commission comes out with the fact that the tribal government actually does have taxation authority and to what extent, what kind of taxation are we talking about? Personal property, sales, taxation on land, et cetera?" If a tribe should have that kind of authority and it imposed that type of authority on its tribal members, or if it should try to impose that type of authority on all persons living within the original treaty boundary area for that particular tribe: What kind of fight will we have on our hands and what type of problems will the

Federal Government have insofar as its trust relationship to that tribe in protecting that tribal government's rights to apply this?

Mr. **Adams**. If you look at the reservations around the country today, you have very few tribes asserting tax authority over much of anything. First, you don't have them asserting tax authority generally over their own members, and certainly not over the trust lands.

You have them asserting tax authority only in rare instances against non-Indians, and yet you have that intensive fight trying to get that taxing authority into the hands of State and local governments.

That fight exists now, the fight you referred to. It is going on in virtually every State legislature in the West every year or biennial session of their legislatures. One of the problems is that Indians have been overtaxed. I think we show that in some strong ways in our report, and we show that it is not Indian people who are on the Federal dole.

There are 3 million white people in the State of Washington. In four States—Washington, California, Arizona, and New Mexico—there is a $15 billion drain on the U.S. Treasury.

That is how much they get in Federal funds beyond the taxes that they pay into the U.S. Treasury from all their personal incomes, business incomes, whatever the Federal source of taxation.

That would finance 10 years of Federal programing at the present level. That is what the United States has paid out to the white populations of those States. The States that are furnishing that $15 million are Illinois, Michigan, and Pennsylvania alone. Those three States are asking the Federal Government to extend their responsibilities to their Indian citizens, and the Federal Government is saying, "No."

They are delivering $15 million more than they are getting back from the Government, but that doesn't go to the Indians. It is picked up by Washington, California, Arizona, and New Mexico alone.

Nobody denies that Washington, D.C., has a right to exist as a distinct community, whether or not it is self-governing, but the population of Washington, D.C., today is roughly equal to the national Indian population by census.

Yet people are questioning Indian communities' rights to exist. That is what those treaties were all about—saying that Indian communities would exist forever. This report does not substitute for any one of those treaties.

It does not deny the voice of any one of those treaties. Every one of those treaties assumes some obligations. Most of them surrender much, but most of them promise that the Indian communities have the right to exist forever.

Chairman **Abourezk**. I have been told that former Indian Commissioner Robert Bennett is in the room. I would just like to announce his presence. Mr. Bennett, would you stand up? We would like to welcome you to these proceedings.

I wonder if I might take several minutes of the Commission's time to make a couple of announcements? The basis of these announcements is very simple. We are running out of money, and we are going to have to adjust our schedules of work, travel arrangements, and so on.

What I would like to do with the Commission members is to give you each a memo stating where we are, and what I am recommending that we do to try to conserve what money we have left to get out the final report.

What we are going to have to do is severely curtail our travel to begin with, and we are going to have to cut off some of the task force salaries very sharply. That is why we are moving as quickly as we can on getting these task force reports in so that we won't have to keep people on the payroll any longer than necessary.

The third thing I would like to mention, and this is a matter for the Commission itself to determine, I think the Commission has given me authority to deal with budgetary matters pretty well. We won't have to take that up.

But on this matter of task force reports: Are we going to, if we are dissatisfied with the report, send it back to the task force and say, rewrite it, or should we accept it without recommendation and then, of course, amongst ourselves in a Commission meeting decide which recommendations in the task force report we will adopt and send it on to Congress? Or how shall we do it?

I discussed it with Congressman Meeds just before he left, I personally would choose the path of accepting the task force reports as they are handed to us, subject to the questioning and comments that we want to make. And then we, at some later time, before the final report goes in a draft form, will adopt whatever recommendations of the task force we want or don't want or change or whatever.

In fact, that would go along with our budgetary problem since we can't keep these people on the payroll much longer and keep them rewriting and rewriting.

Mr. **Adams**. You may pay us and find it is not available anyway, and we wouldn't want to get into any of that.

Chairman **Abourezk**. That is possible, too. Yes.

Commissioner **Dial**. I think that we should accept all task force reports as they are written, and in this way we include the work of the task force. We see what Mr. Adams is saying.

If we send Mr. Adams back to redo his job, and he is doing it as we want him to do it, then, no, we don't get his work. We are getting the Commission's work. Now I see our task, when we make our report, and the conflict in views can be shown in the Commission report and the task force report.

So I feel that each needs to stand on its own merit. That is my feeling.

Chairman **Abourezk**. Thank you. I want to say that Task Force No. 1 is one of the few task forces that turned money back in. It has helped us a great deal by doing that. I think it has turned out a good work product, whether or not we adopt all recommendations or not.

Mr. **Adams**. Senator, I don't want to get into the game of suggesting what you can do with this report.

Chairman **Abourezk**. We may or may not adopt what you suggest therein.

Mr. **Adams**. That is not what I was suggesting either.

Chairman **Abourezk**. We will vote on whatever you recommend we do with your report.

Commissioner **Whitecrow**. Mr. Chairman, I would like to concur with Commissioner Dial. I don't feel that we need to send any of our task force people back to do a job if we are not satisfied with it. We asked these people to take these particular jobs.

We agreed at that particular time, by appointing them to these positions, that we would accept the quality of their work as it was presented. From that standpoint, I would concur with Commissioner Dial.

Chairman **Abourezk**. Any other comments on that aspect? I think we ought to take a vote on it now.

Commissioner **Borbridge**. Mr. Chairman, I would also discuss my concurrence. I feel that acceptance would respect the integrity of the report. Any rewriting or recommendations that we ourselves have as a Commission, in terms of whatever reworking we do, can certainly be directed towards a final report, and it will save us both time and money.

Chairman **Abourezk**. Then I will entertain a motion to that effect.

Commissioner **Borbridge**. I would so move.

Chairman **Abourezk**. Can I amend that motion to say that we accept these reports with the thanks of the Commission for the work of the task force members?

Commissioner **Borbridge**. Precisely what I had in mind, Mr. Chairman. That will be fine.

Chairman **Abourezk**. All those in favor say "aye." Opposed, "no." The ayes have it. Each of these task force reports will be accepted as submitted, subject prior to acceptance, of course, to the questioning of the Commission members of the task force.

Commissioner **Bruce**. Mr. Chairman, we do plan, don't we, to publish the report?

Chairman **Abourezk**. Yes, I think so. I think we had planned to put them in back of the Commission reports. I want Ernie, before this meeting is over today, to tell us the procedures of publishing our final report and what will go in it. I think one of those is the task force reports will be attached as appendices to the Commission report so that it would be there as a matter of comparison to what we finally adopted.

**Commissioner Deer**. I think it probably goes without saying, but I think it is important to have all the materials that the task forces have collected and would like that this be part of the record. I would like to have that noted.

Mr. **Adams**. I am preparing pretty much a full, complete research library utilizing the materials we were drawing on as well as additional related materials that we think are important for anyone who wants to either examine the full documentary base or body of knowledge that we relied on, as well as for independent research projects at future times.

Commissioner **Deer**. Am I to understand that you have completed the work now? I notice that there was a reference to the omission of some of the case histories, and I am wondering about that.

Mr. **Adams**. There are some additional items, particularly relating to timber resources, fish resources, and additional matter on water rights that I will be submitting, hopefully, by the first of September in the way of report matter or at the earliest possible date.

That document will be completed and included in the report. There is one of our most important inquiries to the Department of the Interior that has gone unanswered for around 3 months, actually going on since mid-April, as a substitute when the Interior indicated that they did not want to come to a hearing and appear for questioning.

We prepared the questions in lieu of that hearing, and we still have not gotten that information which is very essential to both the consideration of the fishing case as well as forest matters, because there are some points of strong Indian relationship, particularly in the Pacific Northwest.

I would also indicate I know you received four lengthy reports in less than a week's time to review. Ours was, undoubtedly, lengthy and pretty much has to be read in its totality to even get the sense of our work as well as the compartmentalized nature of it.

One of the most proficient chapters or sections in it, one of the highest quality reports that have come out of all the task forces, and that deals with Oklahoma and was written and researched by Kevin Gover. And from Oklahoma you don't extrapolate the conclusion that the best thing going in the United States is a new independent Indian agency. But there are suggestions from people in Oklahoma in favor of that agency, and there are expressions from Indian people around the United States for that independent agency as being essential to the conduct or carrying out of trust responsibilities free from the conflict of interests that have been pervasive throughout the last century.

The requirements and obligations imposed upon the United States may well dictate the necessity of that independent agency. Its level within the U.S. Government is, of course, an ultimate judgment of Congress to make. But there has been a commitment by one of the Presidential candidates, Jimmy Carter in Georgia, to give priority consideration to an independent Indian agency in his review of reorganization of the Government.

Again, we go to precedents in proposing some complexion for that agency. The matters of control that the Indian Department, the Indian Office, in fact the Department of Interior, delivered for Indian matters into the joint control of the churches of the United States in 1869.

We think, just looking to that precedent, that it is not beyond reason to consider the possibility that Indians could assert or exercise a similar joint control.

Commissioner DEER. I have a couple of additional questions. One, I also am concerned about some of the documentation for some of the statements. I know, for an example, that you have made suggestions for several funds in the neighborhood of a billion dollars.

Do you have documentation as to how you arrive at these figures, how you can justify that amount of money?

Mr. ADAMS. Yes. It is tied into a standard year period on the matter of costing it out. It has taken some comparabilities relating to Federal expenditures with comparable populations. There are seven States in the West that have lower populations than the national Indian population. The cost to the Federal Government to sustain those populations has been considered.

The budget of the District of Columbia, again, going populationwise, you find some figures that suggest a level of what is needed, say, giving the unserved Indian population at present plus an assumption of obligations.

Take the Indian population that now is served in some degree by the existing level of expenditures and account for the unserved population of Indian people and assuming recognition and assumption of obligations on the part of the Federal Government for those unserved Indian populations, then you can start coming up with some figures.

I have also had some comparative considerations taking account of the figures that have come out of task force No. 7, with respect to how the matters of financing, economic development, task force No. 7 asked for $2 billion, I don't know if that is right out front, but $2 billion just for a land acquisition and consolidation program.

I suggest $1 billion in essentially a trust fund over a 10-year period would have only one element of financing going into land acquisition and consolidation. There are some problems that are evident in task force No. 7's report that will in part be addressed further by myself in submitting additional report material, and that is that there is frequently just a loss of funding in making it available for certain programs. Then we would generate another dollar—just siphon dollars to Indians or non-Indian communities and leave essentially everything unchanged.

The land is still there. It may have different names on the trust, but nothing has changed.

Commissioner DEER. This additional material that you will be submitting: Will you have additional documentation?

From what you say, you have it clear, probably in your mind, the justification for some of these points, but I don't think, at least in my mind it doesn't come across to me in the reports and the documentation for some of the recommendations and conclusions that you make.

Will you be submitting additional documentation for your recommendations?

Mr. ADAMS. Yes; when you talk about documentation: Are you talking about footnotes and source citations or are you talking about the documents?

Commissioner DEER. That is right, both.

Mr. ADAMS. In part, I answered both questions earlier. One is the file and research library that I am preparing from our research materials which will be at the earliest possible time delivered intact to the core staff and will match up to the report.

Commissioner DEER. I have one more question. Could you tell me about the procedure by which your task force worked in producing this final report? You have two other members on the task force. Did they review this report before it was published and presented here, or did they only have a couple of sections?

Mr. ADAMS. They reviewed most of it, not all of it. We have had difficulty getting sufficient copies even to be sent out to them. They have reviewed essentially all the material items, and by one form or another have stated their agreement with the recommendations, or the recommendations and statements that exist in the sections that were directly written by the other two task force members.

There, as well as the Oklahoma section, in the trust analysis section their additional recommendations and options; like for instance, there is the recommendation in the trust section, the possibilities of some new national Federal court system to adjudicate issues arising within the parameters of the trust relations and trust responsibilities and resource protection on trust issues—conflicts of interest.

Commissioner **Borbridge**. I would like to comment to the chair that although I am sitting to the far right and am seemingly in isolation, I am in accord and consider myself a member.

Also I would like to comment. My question is an amplification of that aspect here, and that is, with respect to the matter of the work, time, and effort that has gone into preparation of this report, I can appreciate what was done.

However, I also was concerned that the full credibility deserved by the Chair and the task force might be lacking were the documentation, footnoting for example, not to be completed.

So my assumption here, and I would like the chairman of the task force to comment that you will as you just indicated, complete the process of footnoting so that the specific references and facts and the difference between fact and opinion becomes very specific.

Will your footnoting be completed in terms of how you intended it to be originally or will you be talking with, say, the staff director perhaps, adding further footnotes which may result in part from the staff evaluation?

How far do you see that?

Mr. **Adams**. I see footnotes going in, footnotes becoming essentially a footnotes and comments section because some materials you use you don't place any faith in its validity, but you don't debate it right there when you first presented it.

There are some Government figures that we used that we have almost complete doubt of their validity. We have to cite both the source as well as our belief that it is probably inaccurate information or even why we think it is inaccurate.

Commissioner **Borbridge**. I wonder if you might comment further on the forestry report that you have as a part of your overall approach. You have, as a part of your overall report, a forestry report in that section?

Mr. **Adams**. Yes; we just have an issue as presented by the Bureau of Indian Affairs chief forester in this report, as is, without comments except for the fact that, to me, what it shows by just including that and not holding it for a larger analysis is the fact, when you have Bureau of Indian Affairs Bert St. Arnold recognizing problems and recognizing what needs to be done, they have to fight that recognition through the Bureau.

They may be in trouble for trying to do something about that problem as is indicated by the letter that is available on that forestry report, plus you have the Congress sitting up here with full knowledge of the problem and what needs to be done. It doesn't take our task force to come in and tell the Congress that, yes, that guy is right.

That paper speaks for itself and it speaks to the obligations that are recognized by the Bureau of Indian Affairs and by the Congress as resting with the Congress and the Bureau of Indian Affairs, but when both Congress and the executive are sitting on the problem and not doing those things that they know ought to be done, then it shows—well, its philosophy is somewhat contested by task force No. 7 in saying that intensive forest management, just putting on more personnel, is not the only answer, but in there you also find that where the Government of the United States has the largest personnel commitment to forest management it is not on Indian reservations.

It is in the terminated Klamath forest. That is really odd. We have the Yakima Indians losing between $6 million to $10 million a year by a failure to manage intensively or to harvest to allowable harvest levels.

You have just an over abundance of personnel in those forests that have been taking away from the Indian people. Those are the types of things that are obvious, with knowledge by the Bureau, known by the Congress, but nobody is doing anything about it.

That is one of the reasons we threw that report in because it speaks for itself. It doesn't take the task force to say either he is right or to analyze it because they have analyzed it.

Commissioner **Borbridge.** You have answered this in part——

Mr. **Adams.** That there is substantially more that has to be reported on forestry.

Commissioner **Borbridge.** Then you really are drawing attention to it, but not necessarily coming up with specific recommendations as a result?

Mr. **Adams.** No. Another thing that you have is a good deal of information that is coming to the Commission through the task forces, it has already been through the Congress and its committees.

Many of the problems identified, particularly in our task force and Task Force No. 7, and probably Task Force No. 2 and No. 3, have been submitted to the Congress, in its committees, through GAO reports and through any number of hearings.

That is part of the problem. Part of the problem is not just making a better summary of it so that first the Commission and then the Congress can go over it better, but just getting people to deal with the information that they already have and the processes that are already being played around with this information and playing around with the knowledge of the problems that exist, and very much conscious of many of the answers that people need.

Chairman **Abourezk.** Are there any other questions?

Commissioner **Dial.** Yes; I have a question. In brief would you respond to Mr. Wilkinson's memorandum, especially the last paragraph—Charles Wilkinson, your consultant?

Mr. **Adams.** I don't have it with me.

Commissioner **Dial.** The last paragraph.

Mr. **Adams.** Let me read it. It says in short:

> You have given too much hard work and don't want your report to go down the drain—legal propositions. I urge you to adopt a moderate tone and pick your issues carefully. As an overall matter I would suggest that you place great emphasis on building an impressive case in support of hunting and fishing rights and recommending tough, highly specific administrative and congressional standards, especially in your trust responsibilities acts. It seems to me that those are the materials we need most of all to succeed.

I think Congressman Meeds made some comment with relationship to the overdrawn legal propositions. I recall he stated that he couldn't find the legal propositions, at least in the summary.

There has been a real problem, particularly from a number of attorneys addressing task forces not only in my own, but Task Force No. 10, I know, and Task Force No. 4 on jurisdiction, which is essentially a message of "don't rock the boat, don't ask Congress to do anything because if you set them in motion, they are bound to do the wrong thing and Indians are going to get hurt."

That is the tone generally of this memorandum, and although Mr. Wilkinson gives an excellent review on treaty rights as far as he went with the issue we, on the whole, did not accept the tone of his memorandum and think that the Commission has to take some stand on the rights and lives of Indian people.

Commissioner **Borbridge.** I have another question. As chairman of the task force, although you understand for reasons you have just advanced to take certain exception to what you refer to as the tone of the memorandum, notwithstanding, you feel that insofar as the report is concerned, it contains all of the concerns that you as chairman felt.

Is this correct?

Mr. **Adams.** No; that is not correct. The report reflects consensus positions generally within the task force. It does not contain some matters where there would be disagreements between the chairman and either one or two other members of the task force.

Commissioner **Borbridge.** Your response is quite appropriate. I should reword rather: Within the opportunities offered to the task force to work together and to offer a consensus expression of the findings of the task force, you and the members of the task force, although you might have taken exception to the tone of the memorandum, still felt that it did not inhibit the extent and nature of the material and the recommendations offered as a task force?

Mr. **Adams.** No. I don't think there was an inhibition. Let me read another passage from this memorandum where, for instance, it says:

> Similarly I had some trouble with repeated reference in the third quarterly report to tribes as "nations." We all want underlined tribes to be nations, but the hard truth, of course, is that we don't treat them as such. My real concern is the essential language will brand your report as radical in the eyes of the congressional members of the Commission. If that were to happen, your report may well go unread and unheeded.

Now I think any lawyer who has any appreciation for Indian law or Indian tribes or even tribal constitutions is not upset by the use of the word "nation." The Yakima Nation gets angry with you if you don't call them by their constitutional name, the Yakima Nation.

It's a word that was used with some frequency by John Marshall. It's a word that has been with us in relation to Indians throughout history, and if any congressional member or Indian member on the Commission thinks that that is a radical word, I think that there is some doubt that you should have spent these last 12 to 18 months on this Commission because it would be beyond your comprehension to understand the subject matter if you think it is "radical."

Chairman **Abourezk.** Can I say something in that regard. I have always looked at the product of the task forces as a process of recommending based upon their investigations, recommending to the Commission various alternatives that we ought to adopt and recommend to the Congress.

For that reason I have passed on to the staff director my own feelings to the task forces that the task forces ought to be free to come up with any idea that they have. That is what we have them for, and

I think that is what the other Commission members said this morning during the other brief discussion we had.

If we started to restrict you at the beginning as to what we thought ought to be done, then I think it would have been very constricting in terms of what ideas you might come up with. You might start acting then as a judge.

It is almost like a policeman who tries to put himself in a position of a judge. You can't do that. He can't judge whether something is politically right or politically wrong.

All he has got to do is simply come up with every way he can to do his job. That is what we expect of the task force I was going to express that I think that is what ought to be done.

Then as politicians, those of us on the Commission are indeed politicians, whether we are Indian politicians or white politicians. It is up to us to try to take the recommendations of the task forces and proceed on with those as something that would be salable in a political arena or not.

I think it would be a terrible mistake to try to restrict the task forces to certain ideas. I think it ought to be a free flow. You know, Hank, as well as I do, that I could never agree to return the Black Hills to the Sioux Tribes.

Mr. **Adams**. After another year——

Chairman **Abourezk**. It may be going back freely after that.

Mr. **Adams**. You may have a South Dakota recovery act.

Chairman **Abourezk**. Nevertheless, you are very much entitled to say that as what you believe.

Mr. **Adams**. I think that was proposed to your Commission hearing in Denver. I think the Standing Rock Sioux suggested that even if it took several generations, many decades, that there should be some move made in that direction and for us to see a validity in that of the same sort that was involved in the Blue Lake return, we don't think that we should have withheld that.

We think there was some legitimacy to its consideration. We don't necessarily believe that the Commission is going to recommend it or the Congress is going to recommend it, but we think that in some parts we have an obligation.

Chairman **Abourezk**. That is precisely my point. I think you had an obligation to come up with whatever recommendations you thought were valid. Really I think that is the legitimate feeling on the part of all the Commission as far as I can determine.

Commissioner **Bruce**. Hank, I think Senator Abourezk hit it on the head, a salable product in the political arena. I like that. I think we face reality. We have to face reality in what we do recommend.

I was interested in the federal structure that you recommended. I think, down the road, we are going to have to take a real hard look at what kind of a structure is best concerning Indians and that is our responsibility.

Can you explain to me how this ties in with the trust responsibility?

Mr. **Adams**. Yes. The present structure has failed almost totally in management of the trust responsibility for reasons evident in the report and reasons which we will probably know in the establishment of this Commission.

The present structure has failed and you do need some new structure that is committed for the proper management, maintenance, and sustenance of the trust responsibility as well as meeting both the obligations of the country as well as meeting the needs of the Indian people.

We do give a reading in one section. We begin discussion of trust responsibilities with the statement made as a position paper by the National Tribal Chairman's Associations. We present differing views on the Department of the Interior and partly different and partly agreed views by such people as Bill Veeder and Reid Chambers.

The input of the section is to assess the validity of the NTCA position: That the trust responsibility incorporates: (1) protection of rights and resources including tribal sovereignty or autonomy and the enhancement of the governmental rights of Indian tribes, and (2) that there is an obligation to eliminate conflicts of interest and also, there is an obligation under the trusteeship to provide social services. The social services aspect and trust responsibilities has been rejected by the Department of the Interior for a number of years.

In testimony before this Congress, 1973, the Senate was informed that the trust relates only to property. We show analysis and historical development for the trusteeship, which is more in the area of personality of the United States toward the personality of Indian tribes and only secondarily do properties become involved.

This was, in fact, the situation for half the history of the United States. How many Indian lands were in trust in 1876? Darn few acres unless all Indian lands go into trust. The trusteeship existed then, but the trusteeship was recognized as being in a broader framework, having broader dimensions, and we show the authorities where that is true.

We show where international forums and conventions look to the relationship of American Indians to define the nature and duties of guardianship and trusteeship for other aboriginal peoples in other parts of the world.

There were recognized duties of guardianship and trusteeship submitted to President Madison or President Monroe by the Secretary of War in 1820. These duties, these obligations, included education and health. So we have tried to demonstrate with authority and history that the trusteeship has a much broader dimension than has been accepted in recent decades, since World War II, by the United States.

Maybe no one will believe this, but we do show that not only was that true in the United States but it became almost a rule, unfortunately for imperialism and colonialism, throughout the globe. That there are duties of trusteeship that go into the social services area.

Commissioner BRUCE. I know we are going to be looking at a lot of policy revisions. Maybe they are legislative, but they are policy revisions. Do you have some specific revisions or changes that you feel are necessary?

Mr. ADAMS. We think that it is possible to eliminate the whole crippling stigma or effect of termination in any of its forms by a firm national commitment to permanency for the Indian societal life in the United States.

That can be effected in a number of ways. There could be a 100-year treaty in which life and perpetuity could be promised again. A treaty between tribes who would want to join in that treaty and the United States.

There could be that commitment to permanency and elimination of the threat of termination or eternal objection to whatever is happening with Indians. There has been any number of ways that the United States has dealt with issues of trusteeship or sovereignty, permanency.

In Africa, the United States planted American Negroes on the coast and formed the country of Nigeria and created sovereignty. They didn't find a sovereign black population there. Liberia, excuse me.

The United States took American Negroes over to the coast of Africa, Liberia, and said, you have sovereignty. I guess there was some connotation of liberty in there also.

I should have known that the United States would only have ties with the better names. I am surprised there is not a South Liberia.

Chairman **Abourezk.** Off the record.

[Discussion had off the record.]

Chairman **Abourezk.** On the record.

Mr. **Adams.** Senator Abourezk is right. I guess there was sovereignty assigned to organizations to create a new country there. So you have all these possibilities that exist in precedents.

Twenty-five years ago, how many nations were there in this world that could make treaties? That number has multiplied several times. There are a lot more nations who can make treaties today than there were 25 years ago.

This is one of the problems. They look for all the reasons why they can't do the right thing. I don't mind telling you they set up all the obstacles before giving consideration to any ideas.

Chairman **Abourezk.** How do you respond to the statement of position by Indian traditionals? I am thinking specifically now of some of the traditionalists on the Pine Ridge reservations in South Dakota who say that, "We don't want Government social services. We don't want the Government interfering with us in any way."

I don't know what percentage of the population they may comprise, but nevertheless, there is a substantial number who say that. They just want the Government to leave them alone.

How do you reconcile that attitude on the part of a lot of traditionalists around the country who say that? I am sure you talked with them more than I have?

Mr. **Adams.** I would have no problems with that either as an individual or as a Government of the United States. I think that there are a lot of people who have had some real feelings about even more traditional people in Latin America or South America or even this satellite television program to put a television in every Eskimo house throughout the Arctic, in Canada, or Greenland.

I have some personal questions about the morality of imposing that impact upon all those traditional people who in their own way were probably doing fine.

Chairman **Abourezk.** You don't have any personal problem. My question is: How do you reconcile it with a strong advocacy position of what we call a trust relationship?

Obviously, one part of a trust relationship is that the United States should defend Indian rights on land, hunting, fishing, and so on. The other part of it is trust rights extend to social services, health, welfare, education, and so on.

How do you reconcile it? Not whether or not you have any problems with it, but how do you do both at the same time? How do you satisfy both demands?

Mr. ADAMS. On a single reservation you can have essentially a pluralistic or a small pluralism within an Indian community.

Chairman ABOUREZK. What does that mean?

Mr. ADAMS. You can have Indians divided on other bases than the political divisions that have come to be accepted among the tribes. You can have different lifestyles.

Chairman ABOUREZK. You can or cannot?

Mr. ADAMS. You can on a single reservation. Another problem is dealing with Indians as a singular group—either nationally or at a local level.

Chairman ABOUREZK. Let's take Pine Ridge as a microcosm of what might be happening nationally in a lot of places. You say you can have both lifestyles. Now my question is: How do you do so without intertwining the political aspects?

Let me give you an example. The Wounded Knee takeover in 1973, as you know better than I do, arose directly because the traditionalists said the Pine Ridge government, the political system that exists on this reservation, is ignoring us.

We want to be left alone. They are leaving us alone. In a way they are also depriving us of our rights out here, so that political fight resulted in a lot of violence, as you know, and more political division.

Mr. ADAMS. There are some other elements on the "leave us alone" concepts that generally also relate not just to "leave us alone in our most depressed state" or the lowest state that we have been driven, allow us just the minimum chance of recovery so that our "leave us alone" posture is viable, not saying return the Black Hills but that there are some necessities for at least partial recovery for many of the people before they can, say, have the freedom that they want or require to more or less have that "leave us alone" situation again.

Chairman ABOUREZK. That is not precisely what they said to me. I don't know if you attended the hearings held in 1973 following the Wounded Knee event. Were you there?

Mr. ADAMS. No; I wasn't there.

Chairman ABOUREZK. The thrust of what most of the witnesses said was: We are going to manage if you can make Pine Ridge leave us alone, and if you can make the BIA leave us alone, and the FBI and the Government. We will manage somehow.

We would much rather be deprived that way than we would the way we are deprived at this point under these conditions. But they didn't say, we want a lot of things to change before you leave us alone. They just said leave us alone.

Mr. ADAMS. They don't want to be frozen in the static situation that exists right now. I am absolutely certain of that. I am meeting with some of their treaty counsel tomorrow in Wisconsin.

They are asking the White House for some things again. That is not because they want to be frozen into a static situation that now exists. They do need some breathing space before a "leave us alone" situation becomes viable again.

Chairman **Abourezk**. There is another aspect that with the permission of the other members here I would like to explore. That is the idea of the oligarchical situation that exists on most reservations and that is that by the use of the Government's social services, Indians have become educated, and those who are more aggressive than other Indians have taken over the power structure of most reservations.

And generally that leaves the traditionalists out. They are always kind of left out of the picture. We passed, here in Congress, the Indian Financing Act, Indian's Businessman Development Fund and so on, under the assumption—and I think the assumption is in part valid—that if you create jobs on the reservation, it is going to erase a lot of their problems.

I think it is very valid, but it is in the method of creating jobs that has also created more problems. It is that segment of the Indian population that is aggressive and that are educated that is taking advantage of the Indian Financing Act and the Government programs constantly, EDA programs and so on. Very little of that money goes to the development of the reservation as a whole.

It goes to the improvement of the few people who know how to fill out a Government grant and who can fly into Washington and make sure they get what they want to the exclusion of the old traditionalists who just don't believe in that sort of thing.

Have you explored in any way how this situation can change? For example: Is there a way to set up Government programs that will make certain that people on the reservation will clear the benefit for the entire tribe rather than for the benefit of themselves?

On the one hand you have got this tribal structure that you are pushing for and a lot of people want—the old style, communal type of structure—on the other hand, you have got programs that are directed toward individuals and which excludes the majority of people on the reservation.

Have you explored that?

Mr. **Adams**. Yes, and no. Not in any substantial detail in our report. We have referred information to other task forces relating what we have seen as being errors in the past. The OEO delivery of a dollar to two people, both poverty line, $6 to three people below the poverty line and still not bringing those three people up to a level of poverty.

And the relocation designed to deliver 30,000 Indians a year from reservations into the cities and finding that the young institutional trainees, 3 years after their programs, after they were in their jobs, were only earning $3,100, and those were the young single persons.

The people with big families that were also going into those cities were getting substantially less. We looked at what has happened. We have criticized that elitism that seems to operate in a number of the programs that have come forth in the past dozen years for Indians.

We took testimony in Sacramento relating to both reservation and urban programs where budgets in organized programs increased by $1 million from a few tens of thousands to more than $1 million budget organization, and all those organizations did was build up their offices and bring more people in there.

On the reservations and in the cities, no more dollars were hitting the streets for people. They weren't hitting people in the communities on reservations. We do think it is possible under the proposed independent agency that we have recommended, with its various units, that there has to be something more operative than funding by the buddy system, the friendship circle, and even the gains of upward mobility.

This Commission probably suffers some of the worst results of upward mobility. People looking to their rising dollars in joining onto the Commission, at task force levels down, to enhance their reputations to move onto a job where they can draw more of the Indian dollars.

It is OMB. You have OMB funding, 18 or 27 programs that are on all reservations, primarily consultant groups, that just engage in this game of getting more dollars from someone, but not getting those more dollars down to the people who have been without them for all these years.

We have addressed it in part in the structure that we proposed, but we also have just briefly mentioned in our report that it is also the people who are involved in agencies, not just the structure.

It takes some committed people to make these things work right. You have some of the factors operating against that in the past in the form of recent Federal programing. A number of Indian organizations have asked the review council and a number of regional groups have appealed to the Congress in the past from the time of the proposed omnibus bill to the present date to Congress: Don't keep piling these programs on until you see what is happening with them.

Chairman **Abourezk**. Do you think that the Government should direct all of its programs? The policy of this Government ought to be to make certain that any Federal program is directed for the benefit of the entire reservation and not only segments of that reservation.

Mr. **Adams**. Yes. If the Commission has any field that it can go to to get the best community level statement of that, I think it would come from the Papago Reservation where they are treated as just 11,000 people irrespective of their community layout.

They have communities of 650 people, a community larger than 75 percent of the tribes in the United States, yet can't get BIA or Indian Health Service to program for delivery of a single water pump or water tap into that village.

That is because the Government is not looking at that. They are just looking at the Papago Tribe—which is 11,000 people. On revenue sharing, Commissioner Whitecrow asked last time: "What do you do about these two member tribes?"

I was at a hearing, and I assigned four of my staff members to find out what we could for those two member tribes. I did find that under revenue sharing there are funds being delivered to a tribe which has an eligibility of one person.

The cumulative amounts delivered over the first 2 years, revenue sharing to that tribe in the community, was $72.50. Revenue sharing is just blindly thinking that it is doing something for that person or that tribe or whatever they are dealing with out there.

It doesn't make programmatic sense, but it is dealing with people in a very inhuman way, and saying that we are satisfying their needs.

Chairman **Abourezk**. Ada?

Commissioner **Deer**. I know there is an interpretation of trust responsibility, and I would like to have your comments on this. How do you propose this ought to be resolved?

Mr. ADAMS. I am not fully aware of the difference between task force No. 1 and task force No. 2. If you could briefly state it?

Commissioner DEER. Task force No. 2 states that the only authority which the Secretary of the Interior should exercise in Government should be confined to the Secretary's responsibility to protect trust assets and resources of the Indian tribes.

In other words, the Federal Government is supposed to really let the tribal governments be. That is different from what your interpretation is.

Mr. ADAMS. Our interpretation is essentially that the concept of trusteeship and trust responsibility has become very narrow from its original dimensions and that in its original dimensions, property becomes secondary.

We addressed it both from the standpoint of the tribal existence as well as the properties or the assets of the tribe and both with respect to the ability of the community to accommodate and satisfy its needs as well as to generate the best maximum benefits from its own assets that that trust responsibility exists there.

However, we are saying that it exists in broader dimensions including a maximum of benefits to Indians and resources for Indian people. Task force No. 7 report demonstrates very clearly that Indian resources are not going to benefit Indian people.

For example, on Quinault Reservation—that is not citing their report—the economic benefits of the Quinault timber harvest to non-Indians at this time is approximately $100 million a year.

That is the money it generates in the way of jobs and the secondary incomes—economics in the non-Indian community. I think Quinault's harvest last year was something around $17 million for Indians, total incomes of those forests, but they generate $100 million to non-Indians in the surrounding communities.

We have non-Indians using a very small fraction of Indian agricultural lands, but you have non-Indians securing between 60 and 75 percent of the revenues derived from Indian agricultural lands.

You have non-Indians using the best Indian lands for their enterprises, and Indian people on the least productive lands or those lands that require the highest investment for the lowest returns.

You find that true, and this is one of the real tragedies of the water rights issue. You have non-Indians securing the greatest amount of income that is coming from those irrigated lands that Indians have been fighting so desperately to get the water to.

We found on the Gila River there are Indian farmers who constructed the irrigation system to this one portion of the reservation. They put their money in. After their lease came up, they were outbid by a non-Indian. Just by a few dollars difference they were outbid, and 38 Indian farmers, Maricopas, were driven off the land for a 5-year lease, when they couldn't farm. During that period they lost all their farming equipment. Yet you have this Nation, delivering $300 million a year in subsidies to peanut farmers, not being able to keep those 38 Maricopa Indians on those irrigated agricultural lands or any agricultural lands.

That to me doesn't make sense from the standpoint either of Federal policy toward the Indian or Indian policy toward themselves. I don't see how any tribe could permit that, but it is happening.

You have intense fights over waters on the Yakima Reservation where virtually every irrigated acre in the Yakima is being farmed by non-Indians. That is one of the real tragedies of the whole water rights fight.

How do you reconcile that with trust responsibilities? I think in the case of Maricopa, at least, that you can provide some system of subsidy or bid matching funds in order to keep lifetime Indian farmers on their land where you have people in the Southwest who have been irrigating lands for several thousand years.

I think that is one of the worst tragedies that we saw in going out in the field where these Indian farmers, who desperately wanted to farm, couldn't keep their land and lost all their equipment. This is different from the situation in Yakima where the people are content to lease out their land. But where you have Indians who want to be on that land, I think you can do something to keep them there.

Chairman ABOUREZK. If there are no more questions, we want to thank you and your task force for your report and the work you have done and the contribution you have made, and we appreciate it very much.

Mr. ADAMS. If I could make a final remark, I do also want to commend to your attention the article by Roman Bitsuie in our final report relating to water and industrial development in the Southwest. I would add one more thing in response to the return to Siberia. When our task force was first organized—I don't think it was Congressman Meeds—but some of our congressional friends hoped that the results of our task force wouldn't be the demand for return to Asia, Africa, and Europe movements.

The joke going around Washington among the Capital Indians at that point was that in fact, in the Bicentennial year, that non-Indians did decide to go back and give up the ghost.

So they started this massive migration, got on a bunch of these big Boeing 727's, some big ships and everything and they hardly got a distance off shore and there came the leader of the National Tribal Chairman's Association who started waving his arms saying: "What about the trust responsibilities? What about the trust responsibilities? Come back!"

So we didn't propose that return to Europe because we were afraid that that second scene would happen.

Chairman ABOUREZK. OK. Thank you very much. Is task force No. 2 represented here? Would you please come up? I would like to outline the balance of our meeting today. We will finish up with task force No. 2, then break for lunch, and when we return from lunch we will have the staff—Ernie Stevens and others—explain to the Commission what the recommendations are for writing the final report.

Then we will finish the meeting this afternoon, so if task force No. 2 will come. As you have heard, we have already voted to accept your report, as well as the other task forces.

At one of the earlier meetings you testified you had talked about getting some money from the Donner Foundation. I understand you have done that and that a report has been prepared as a result of that contract money provided by the Donner Foundation and that is completed. Is that correct?

## STATEMENT OF ALAN R. PARKER, CHAIRMAN, TASK FORCE NO. 2, ACCOMPANIED BY MICHAEL D. COX, TASK FORCE SPECIALIST; AND PATRICIA ZELL, STAFF ASSISTANT

Mr. PARKER. The Donner portion of the report has not been completed.

Chairman ABOUREZK. When do you anticipate that it will be completed?

Mr. PARKER. By the end of September.

Chairman ABOUREZK. You will provide that to the Commission when completed?

Mr. PARKER. Certainly. We indicate that in our report.

Chairman ABOUREZK. Are there any other questions from the Commission members?

Commissioner WHITECROW. Mr. Chairman, in regard to reestablishing tribal government, bringing it about, what method of financing did you come up with in your recommendations for maintaining tribal government?

Mr. PARKER. Chapter 3 of our report is devoted precisely to that issue. I would prefer to allow Mike Cox to respond to that question, since he prepared that part of the report.

Mike Cox, for the record, is our task force specialist, and with me also is Miss Patricia Zell who has been staff assistant with the task force throughout its period of study.

Mr. COX. As Alan pointed out, chapter 3—Financing Tribal Government—indicates the difficulties tribal governments have in just maintaining the financing for basic key positions in their tribal government.

When we look to what kind of recommendations we can make to improve the finances of tribal government, we first look to what programs are now presently available to see whether or not they, in fact, could take care of this critical need of tribal governments.

It was argued that in the Indian Self-Determination Act there was an appropriate section for tribes to be able to finance their tribal governments if that particular program was adequately financed.

The feeling was, there was no additional need to create additional legislation in order to finance tribal governments specifically. But the grant section, if it was read broadly enough to allow tribes to not only finance their basic positions of tribal governments—tribal chairmen or tribal judges, and staff people as well—as what it was already supposed to do, which I think was to prepare tribes for contracting and to improve their administrative system. That if it were properly financed and given the broad reading, which the act seemed to indicate, is a legitimate purpose and a purpose which will strengthen tribal governments.

It is our feeling that an adequately financed tribal government, tribal staff, will be strengthening the tribal government. So primarily our recommendations in the area of financing deal with some changes to the Indian Self-Determination Act grants program to allow funds to be able to finance tribal positions. In the procedural guidelines outlined by the Bureau of Indian Affairs, there appears to be a limitation on tribes to be able to salary their tribal officials unless the work that is being done in the grant program is specifically related.

For example, if the tribe proposes to draft a constitution or amend a constitution, if the tribal chairman was to go at a particular time, that would be a legitimate expense and could be used as part of the grant program for the salary of the tribal chairman.

But simply trying to salary a tribal chairman or tribal judge by itself is not sufficient. The Bureau seems to make a distinction between what are general functions of the tribal government, which the Government will not fund, and what are specific purposes of strengthening tribal governments.

Commissioner **Whitecrow**. Thank you. Did you also get into the status of tribal courts or agencies functioning under tribal government? Did you get into this to any great extent to coordinate your work with task force No. 4 on the jurisdiction?

In other words, how the Major Crimes Act might apply to tribal government itself?

Mr. **Parker**. I could answer that. Chapter 2 of our report addresses existing Federal law which in one way or another constitutes an obstacle to the effective exercise of the tribal government powers.

From that point of view, we do overlap with the jurisdictional task force subject area. Our perspective, of course, has been from the point of view of tribal government; in other words, how these laws constitute obstacles, limitations, or problems from the point of view of the tribal government.

I will summarize our recommendations in that area. We recommend that the Major Crimes Act be amended to recognize authority in the tribe to exercise criminal jurisdiction over felony offenses if the tribe wishes and if the tribe has adequate resources and so on.

We recommend that the General Crimes Act and Assimilated Crimes Act, which must be read together, be amended to insure that the Assimilated Crimes Act is not used by the Federal Government to come in and enforce State law in the reservation. Primarily State policy laws, gambling or things of that nature, hunting and fishing regulations and so on. There is a possibility under the law as it now stands, so that we recommend a minor amendment to clarify that.

We also recommend that in title 28 of the United States Code, section 1738, which is in effect a qualification of the full major credit clause of the Constitution, be amended.

We have documented the problem that has been posed to tribal governments because of their courts system, and their laws are not given recognition on the par with other units of government in the country.

So we would recommend a minor amendment to that law to insure that any tribal governments or tribal court orders are on a par with other units of government in the country.

Finally, we recommend that the Indian Civil Rights Act be amended to eliminate the penalty limitations written into that act. The tribal government can only impose the penalty of 6 months detention and a $500 fine for any given tribal offense.

That is inconsistent with a recognition of tribal government as being someone who would set their own laws. Incidentally, we referred to passages in the legislative history of the Civil Rights Act where it appears that the insertion of the penalty limitation was based on a mistake in the minds of the committee when they drafted that.

They took the 6-month, $500 penalty limit, which was written into the Code of Federal Regulations for the courts of Indian offenses and incorporated that into the law. But the courts of Indian offenses were administrative bodies of BIA and there are still some in various tribes. As administrative courts, it is appropriate for the Federal Government to write the regulations and to find that whatever offenses they find, have whatever jurisdiction of whatever penalty limits. But to the tribal courts, which are completely distinct entities existing under the tribal government, it seems completely inconsistent for the Federal Government to write a penalty limitation.

That should be an option of the tribe or community itself. With respect to a series of jurisdictional standards that we would propose amendments to, it goes without saying that there should be consideration of adequate Federal funding to assist tribes in operating an effective system on reservations.

We tied to that issue, through our recommendation on Public Law 93–628, a question which, in effect—without going into extensive research, we didn't feel that was particularly appropriate for our task force, we simply endorsed the concept embodied in the proposed S. 2010 bill—that any increase in the jurisdictional responsibility of any tribal government should be tied to an increase in the level of Federal assistance to tribes enabling them to more effectively build up additional amounts.

Does that respond to your question?

Commissioner Whitecrow. Thank you. I would like to also ask you a question with regard to utilization of revenue sharing money available to tribal governments and any type of formula that may have been determined.

Did you utilize or consider this at all? Did you ever look into the formula currently being used for distribution of revenue sharing moneys to combat crimes based upon population? How do you perceive this kind of approach for continuation in maintaining tribal governments?

Mr. Parker. I will turn that over to Mike Cox since his research was specifically directed to that question. But before Mike goes into the details of answering that question: I want to note that we consistently found problems related to us by tribal community leaders about the formula system which was used, not only by the revenue sharing program, but also under the Self-Determination Act grant system.

Mr. Cox. We have a chapter on small tribes. We felt that as a task force, there were certain particular issues with respect to small tribes and tribal governments which needed to be addressed by the Commission or by the task force.

One of the issues that we do address is the whole question of using the population as a mechanism for funding. What we found is the Self-Determination Act grants program—which allocates funds on a population basis—has approximately 481 tribes eligible to receive moneys at $2 per head.

We found that 326 of those tribes are tribes with populations of less than 350 people. What it means is, for many tribes, it is very easy to get significant amounts of money which does not in any way reflect what the real needs are of that tribal government.

Further research indicates that the tribes that we surveyed, approximately 52 tribes, half of those tribes did not salary the tribal chairman or tribal council. It was voluntary work.

One of our concerns was that these basic positions in tribal government, if they cannot be funded then adequate resources must be found to finance those positions.

There has to be sufficient money elsewhere for tribes to operate tribal governments. Again, the problem seems to be existent with small tribes; they don't have sufficient resources to finance a tribal government.

Under the grants program you don't have any relationship between the needs of the tribe and the population. Therefore, you have small tribes who have the greatest amount of need receiving the least amount of money.

We did attempt to try to go to tribes to find out what they felt should be done in this area. There was a feeling that perhaps we would never be able to get away from a population formula as an initial basis for funding. But under the Self-Determination grants program, there is a special program called the small tribe incentive program which allows the small tribes to receive additional amounts of money if they want to form consortiums with other small tribes or if they submit a single tribe application, which is considered by the Bureau to be of significant importance, and they can be funded that way.

Each agency or area has a certain amount of money allocated to it for small tribes incentive programs. One of our recommendations would be that in that area that there be more discretion or funds available to allow for a funding based upon needs rather than solely upon population.

We think there has to be a basic funding if the committee considers funding as a basic criteria, but over that there should be funds available for the Bureau to look at the real needs of those tribes and what they have to get done.

I think there has to be more discretionary funds available for the small tribes. What, in effect, you have done is, you are providing a great deal of money, a large portion of money, to the larger tribes who certainly have great use for the money, but have at least reached a development in the tribal government which allows them to salary basic positions in tribal government.

We have a whole series of small tribes who can't even do that. The amount of money they are going to receive is clearly not enough under the Self-Determination Act grants program.

Commissioner WHITECROW. Thank you. I have one other question, then I will relinquish the floor, Mr. Chairman. I notice in the reports that I received, a preliminary summary of the report, you approach and make recommendations for past legislation which will solve the heirship problem of land, pages 135–136, and I can't find that information in what I received.

Would you elaborate on this? What is your recommendation for solving the heirship problem of individual lands with regard to what tribal governments might do?

Mr. PARKER. I appreciate your question, and that is something that has been related to us as being a very staggering problem for those tribal governments in those tribes wherein the majority or a significant percent of the land was allotted and then heirship became so fractionated that the land law became virtually useless.

It certainly restricts the tribe in making effective use of its existing resource, but I must confess that we did not come up with a solution that would satisfy us. It is an issue that we just, frankly, didn't have adequate time to address or time that we felt was adequate.

Our section on land consolidation and acquisition, our chapter on that question, ends up trying to suggest a direction that should be pursued in arriving at a solution. I can relate just generally what that is.

Basically, there ought to be an alternative, or series of alternatives which could be spelled out in legislation, which the tribes pursue based on the consensus of the community feeling on that matter.

Certainly, some tribal communities would support and exercise eminent domain authority by the tribal government. That would be one way to consolidate fractionated heirship holdings.

Another way would be if a tribe was able to identify resources. Simply buy it out. That is a form of eminent domain. You would be forcing people to sell their holdings if they have such a small holding that it doesn't adequately allow you to use the land.

But again, that is the question that the tribes themselves are really going to have to solve. I don't think Congress can pass a piece of legislation that will solve it for them.

But you can provide authority and funding mechanisms for tribes to begin to address these problems. We tried to point out the directions that we could take on that.

Commissioner Whitecrow. One of the reasons I am in this area is we do really face this issue. In two or three generations from now this certainly is going to be a tremendous problem. Today, we have 40-acre tracts of land, in some instances, that have 40 or 50 undivided interests fractionated into this ownership.

I think this is an area that the Commission, certainly, should try to face in some manner. If we are looking at laying down some foundations for the future, I think this is going to be a terrific problem.

Mr. Parker. I understand that some good research has been conducted by the core staff. My latest communication with them was that they didn't feel that they were far enough along, that they had some specific solutions.

They have been doing some pretty intense research on that question.

Commissioner Whitecrow. I have no further questions.

Chairman Abourezk. I want to make a comment in regard to the principle behind this issue of heirship. I guess the principle of a lot of the ancillary issues, that have come up during the task force investigations—one of the things: What do you do with the heirship land—they didn't have time or money to come up with a solid recommendation, and there are going to be a lot of other areas the same way. We have heard all the way through, there is just not enough time or money to do it, and it is understandable.

I wonder, when we write our final report—I want the staff to pay particular attention to this—if we could list these areas that are very important but they don't really address broad policy questions but ought to be settled one way or the other, if we couldn't recommend that the administration, the Bureau of Indian Affairs, or whatever agency, undertake these as studies and come up with recommendations themselves?

This is something that ought not to be ignored any longer because every year, of course, the heirship problem gets worse. It really should have been undertaken a long tome ago by the BIA, and they never have, and I think it ought to be.

It is something, certainly, they are not too busy to do. I think a lot of these things could be settled by the BIA and they don't involve broad policy questions. They involve just simply a matter of commonsense.

Does the Commission have any comment on that?

Commissioner **Deer.** This is a question that the Commission certainly is going to have to look into because with the time limitation, it has been only 1 year, it was not possible to list all the various issues.

This is something I would like to have the staff pay attention to also.

Chairman **Abourezk.** Which would then help us to put in what I was talking about before.

Commissioner **Deer.** I am concerned that if we don't come up with a comprehensive policy recommendation on many of these issues, because of the insufficient time and insufficient research, that we would be unjustly criticized. I think we should keep this in mind.

I would like to ask the chairman here about the questionnaire that was sent out to the tribes. I know it has not been mentioned in your report. Is that going to be coming in as part of the Donner report or what?

Mr. **Cox.** We have questionnaires that we did receive back, and they are to be attached as an appendix to the report. What we wanted to do was to get permission from tribes to be able to do that, and we are in the process of doing that.

I don't think this was included within the pack of field reports. There were about 21 reservations, talking with tribes about issues on the reservations, that have been footnoted and used as a basis for a lot of our findings and are to be attached as appendixes to the report for your review once we get, again, permission from the tribes to release those reports.

Mr. **Parker.** The Donner report, which is now like a supplement to our task force report, is going to be primarily directed to the tribes themselves. In other words, there is a whole area of problems confronting tribal governments which really don't concern Federal policy.

They are concerns that the tribes themselves are having, things like serious deficiencies in tribal constitutions which limit the availability of remedies for people who have problems with tribal government; things like inadequate separation of powers between the administrative executive responsibilities to the tribal government and the legislative responsibilities. Issues of the independence of the tribal judiciary, independence from the political control of the tribal council which raised serious credibility problems, even in some cases, serious civil rights problems.

We intend to describe our findings in detail and recommend, or to at least identify, as tribal governments will be receiving this report, some of the better ways in which tribes have found to deal with these problems.

In a sense, they will be recommendations, but we don't presume to tell the tribe how to do it. That is something the community has to resolve for itself. While I'm talking about this: One other issue is the Civil Rights Act has been on the books for going on 8 years now. The Federal judiciary has interpreted that law to require tribal governments to provide, by general standards, equal protection and due process as well as the criminal procedural details.

The fact remains, we found based on our research, that that law does provide an adequate remedy in the Federal courts for people who recognize serious and legitimate civil rights problems as far as treatment by their own tribal government is concerned. We found that there really was no room for additional recommendations in terms of what Congress and the Commission should have before them, but it wasn't clearly pointed out in our report.

But again, it will be addressed fully in the supplemental report.

Chairman **Abourezk**. I think what we will do, if you think the Donner report will go to the tribes, then we will include it as an appendix in the final report along with your task force report, and that is the manner that we will use to distribute it.

Mr. **Parker**. Some of the information certainly will be helpful to the commissioners, maybe in understanding more fully our recommendations.

Chairman **Abourezk**. Any other questions?

Commissioner **Dial**. I would like to know from Mr. Parker will the entire Donner report become part of this report?

Mr. **Parker**. Yes; we will be submitting that to the Commission to be sure they will be able to attach it.

Chairman **Abourezk**. We will have it in plenty of time to be able to attach it. Is that correct?

Mr. **Parker**. Just a general summary. I realize that this has been a very long session for the Commission, and you went into some detail with Hank, but I wouldn't want to do this session without pointing out a couple of other major issues which we addressed in our task force report, and to be sure that you will understand where we are coming from and what our recommendations really involve. First, there is a chapter in our report that goes into the relationship between Indian tribal governments and the range of Federal assistance programs which was written very competently by Miss Zell.

Also we have an entire chapter, dealing with the relationship between Indian tribal governments and the trust responsibility of the Secretary of the Interior. Commissioner Deer made reference to that in the question to Hank Adams about how do we define trust responsibility.

We didn't intend to define trust responsibility. We consciously didn't attempt to define it in that section of the report, but we addressed the relationship between the trustee and the tribal government.

I think it is clear to anybody familiar with Indian affairs that in the past the relationship has been one of paternalism, and there are still serious remnants of that paternalism existing in that relationship. Our proposed solution to that is to provide limitations on the Secretary's authority over Indian tribal governments, by restricting his authority to countermand or veto or disapprove any tribal governmental action which is only based on his trust responsibility.

Where he finds the tribal government is proposing to do something that will affect the trust, then he has the responsibility to review that action. Of course, his authority over the trust is ultimate.

Anything else not related to the trust should be the tribal government's responsibility. There is no room, in policy or in theory, for the Secretary of the Interior to have authority over Indian tribal governments.

We attempt to do that by adding an amendment to section 2 of title 25 of the United States Code—the general delegation section—to insure that authority that the Congress has delegated to the Secretary of Interior over the management of Indian affairs goes to trust.

Also, we made some recommendations for amendments to the Indian Reorganization Act. I don't think they are particularly controversial, but the issue that runs through all of our reports, which we found we couldn't overemphasize, was that the problem with federal policy right now—as far it addresses tribal governments and the status of tribal governments, the legal and jurisdictional status—is that Indian tribes aren't truly recognized and treated as governments. That goes back to the fact that the Secretary of Interior continues to have authority over tribal governments beyond the scope of the trust.

There are jurisdictional limits to the authority and the responsibility of the tribal governments which, in fact, are anachronisms that still exist in the law. The relationship between Indian tribal governments and a whole range of domestic assistance programs.

The problem is the Indian tribe does not have the status of a politically independent jurisdictional unit. The problem is with the resource question—the fact that Indian tribes aren't able to fully function as governments because they don't have resources. I just wanted to bring that to the attention of the Commission and hope that you will find that as you get a chance to read and go into detail in our report.

Commissioner **Borbridge**. Mr. Chairman, first a comment, addressed not only to the task force but perhaps applicable to all the reports to be received from the various task forces; I very much agree with the comments made with respect to those issues which may arise out of the investigations, but which because of limitations of time and money may not lend themselves to a full investigation.

I certainly want to make it clear that my feeling is that bringing those to the attention of the Commission will detract in no way from the value of the reports but rather will not only tend to enhance those reports. I think even if these should arise at the last moment and be added in the appendix or any other means, this certainly would indicate the carefulness of the reports and the detailed investigations would at least allow us to bring these things to the attention of agencies or others who might be in a position to do something about them.

As to my second comment which is a question: With respect to comments that you have made which I find very logically detailed as to how tribal governments might be strengthened, did you encounter or make reference to those situations in which there might not be a clear cut definition of what the tribal government may need?

As an example, in some areas of the country, tribal governments were exercising certain powers that are traditional. For example, judicial as well as economic and other powers.

In some areas of the country, tribal governments did not exercise judicial powers and perhaps did not exercise other powers that we traditionally ascribed as being the right of tribal governments.

I know that as you proceeded, you noted that in Alaska, for various reasons, the task of defining what a tribal government was in Alaska was left incomplete. As a consequence, for example, the Bureau, in its efforts to insure the eligibility of Alaska for various programs, gave recourse to the definition on or near reservations.

This made it possible for Alaskan Natives to be eligible for various programs. Again, because there were cases filed under the Indian Claims Commission, the cases themselves became moot because of the passage of the Alaskan Native Claims Settlement Act.

We, in Alaska, ended up there with nonprofit corporations which would appear to have full economic powers but which would not necessarily have, say, judicial or other powers.

How did you deal with this particular situation? What I am saying essentially is: Where the definition of tribal government is acceptable and seems clear cut, then I think the recommendations certainly have a lot of merit.

I am curious about where the definition may not be as clear cut. How do you suggest proceeding in that area? I don't suggest that this is the sole consideration of this task force. There are several that need to be concerned about this issue.

Mr. PARKER. In the course of our year's work, we had some long discussions about whether we should proceed on trying to define what tribal government is and use that as a theoretical premise upon which to go into our other areas.

Frankly, we decided as a strategy or tactic or theoretical proposition, that we shouldn't begin to define tribal governments other than to discuss the relationship that should exist and discuss the recognition that would be imbedded in Federal law.

Of course, the obvious problem with trying to define it is that by definition you limit the potential for tribal government. So, not only are the questions, like in Alaska where under existing law tribes or natives up there aren't recognized to have full range of jurisdictional capabilities that some of the tribes in the contiguous 48 States have, but also many small tribes; simply because they have such a small land base and such a small population base defies commonsense to think that they would exercise a full range of powers, full structure of government.

With respect to those communities—the small tribes, whatever tribal communities might fall into that category—I think that the only tactic that really makes sense is to leave it open ended.

In other words, if at some time in the future the Congress and the communities in Alaska should decide that they want to pursue a course of moving in the direction of political and jurisdictional independence and completeness, then the door should be left open for them to pursue that direction.

Small tribes, for example, see a need to enact a land use plan for the small reservation. The door should be left open for them to exercise that authority. If they see a need to establish a judicial mechanism, say, in the area of hunting and fishing but not in the other areas, then the door should be left open.

To attempt to set categories for tribal governments and say, this category of our Government has this much sovereignty or this much self-government powers and this one has more and so on—I think it is an impossible task and a dangerous one to pursue.

I hope that responded somewhat to your question.

Commissioner BORBRIDGE. I think you have given a pretty good answer to a very difficult question with respect to small tribes like Alaskan Natives or those who might not exercise the full range of the powers, who in exercising certain powers consider themselves to be acting in the best interests of their tribes or native groups as tribal governing bodies. Thank you.

Commissioner BRUCE. Do you think that the Federal Government should never pursue a role as mediator in tribal government disputes within the tribe itself?

Mr. PARKER. We never fully addressed that kind of question. Certainly, you, and other people who have extensive experience in Indian affairs, can point to cases in the past where the tribal community has become stalemated because of two factions claiming to be legitimate representatives of governments.

What is the response of the trustee in that kind of situation? I think that there has to be recognized an ultimate arbitrary power for the trustee to decide with whom he must deal.

That is a responsibility that I think is tied to a trust relationship. The procedures by which the Secretary exercises that kind of power, is where there is need for reform.

Under existing law it is just not defined. We have received some evidence in the past of an abuse of authority by the Secretary and his agents insofar as implementing that particular trust power.

I think those abuses can be cured by defining much more carefully the procedures which should be followed. If the Commission, in its deliberations, would like to get back to us on that issue we would be very glad to cooperate and give you our thoughts and results of our research and to see how those procedures might be tightened up. But they are not fully addressed in the report as it now stands.

Commissioner BRUCE. Also, you indicated that tribes now have the power to tax. Do you think that they should have the power to levy income taxes on Indians and non-Indians living on reservations?

Mr. PARKER. I think that is an area that is close to Mr. Borbridge's question, I think the Federal law should try to steer a course of recognizing a basic authority in the tribal governments.

If you are not a government, then you can't tax. It is a very simple proposition. The extent of their taxing authority is something which the tribe could define for itself. But I think there is room for negotiation in the governmental basis between the tribe and the State. It is being pursued successfully in South Dakota, for example, the chairman's home State.

In the process of negotiation, which is also addressed somewhat in the task force report, that is the only way that you can solve very hard problems like that.

To answer your question directly: Federal law should recognize the authority of the tribe to tax all persons and all properties within the boundaries or reservation.

Federal law recognizes that at present, and I would hope that Congress would not in the future attempt to define limits in those areas.

Commissioner WHITECROW. I have one question in regard to identifying tribal membership. Did you approach this from the standpoint of tribal membership or are you looking at tribal membership as the point of descendancy?

Mr. PARKER. To the extent we addressed it in our report, we came to the conclusion that that is an option which the tribes themselves should have—defining whether they want to go on descendancy criteria or what?

That is something the tribal community itself has to decide. For the Federal Government to attempt to tell the tribe how it is to define its own membership standards, I think, is repugnant to the philosophy of self-government.

Chairman ABOUREZK. For purposes of Federal funding: Does the Federal Government have a right to define who will receive Federal funding in terms of quantum?

Mr. PARKER. Not insofar as the tribe itself has decided to define that for itself. Some tribes have opted not to decide to set up their own membership standards. I may be wrong, but I think, for example, that the Navajo, are content to leave that to the BIA.

Insofar as you are talking about Federal programs and Federal funds which are directed to the tribal government and to the tribal community as an entity which exists within the one geography, that should be something that the tribe itself ultimately should decide.

As to services for Indians living off the reservation, of course, that is something beyond the scope of our task force. The Bureau is moving in the direction of coming to a more satisfactory criteria.

I think there is no other course, but that is something the Federal Government has to resolve.

Chairman ABOUREZK. You break it down in two targets: The Government should determine who they are funding by category or classification, but if they decide to provide funding to a tribe, then it is up to the tribe and the tribe determines internally who shall receive that largess?

Mr. PARKER. Right.

Chairman ABOUREZK. All right.

Mr. COX. One problem I would like to point out that we discovered, especially with the self-determination grants program: There is quite a discrepancy between what the tribe considers to be a service population and what the criteria of population is determined for the Public Law 93-638. They use the general revenue sharing standards which is based on the 1970 census which excludes Indian members of tribes who reside off the reservation—not on trust land.

In other words, you have to reside on trust land off the reservation to be included in that population count. Many tribes have complained to the Commissioner of Indian Affairs about the discrepancy between the service population for some programs and discrepancy between the population figures that are going to be used for the grants program.

In some cases it means a considerable amount of money to many tribes. Again, you have a problem, not of membership, but inaccurate determination of what the population of the tribe is.

If money is being allocated on a formula basis, you have tribes which are not receiving their fair share of the money based on that alone because of the discrepancy between who is eligible and who is not eligible.

Commissioner **Deer.** You stated that the Secretary should have a limited control or exercise over the various tribal governments. On the other hand, there should be heavy subsidization of this.

How do you reconcile these two? How can the Government provide a lot of funding to tribes but yet not exercise control?

Mr. **Parker.** I don't think there is any objection, certainly we don't have any objection in the report to fiscal controls which the Government under law can't avoid. For example, if we are giving a grant under the Self-Determination Act to help the tribe, there are basic fiscal accountability controls which have to be written into the grant.

I don't think those are objectionable from the point of view of the tribe, but where the Federal Government ties controls in a policy area to use of this Federal funding—for example, contracted programs—we have consistently heard from tribal people all across the country that the contract under Public Law 93-638 is really not something over which there is a lot of tribal control.

In most cases it is a take it or leave it proposition. You can contract for this program, but the budget level has been set, and it filters down through the Bureau. In fact, the program design has been set and the definitional program has been set.

So you have a take it or leave it. You can take the program with inflexible rules, or you cannot take it and allow the Federal Government to continue to administer those programs.

I think that is maybe one of those issues which has not really been adequately addressed in our report which I hope the Commission will be able to address because it is a very broad-ranging question.

We address it to some extent in our discussion of the relationship between Indian tribes and the Federal assistance program. There is no simple answer. What we are recommending, as far as the relationship between Secretary and tribe, basically is a theoretical premise that control over any tribal government in a policy or substantive nature should be limited to that trust.

Controls over Federal programs and Federal funds which are on reservations, by simple logic, should be left to financial kinds of accountability rules.

Mr. Cox. Our primary concern is with the Secretary's approval power over, for example, tribal ordinances. That is the area with which we are primarily concerned. The role of the Secretary: Whether he should have a role in approving or disapproving tribal ordinances which don't involve trust law or trust responsibility but are solely particular ordinances or resolutions of the tribe which have to go through the secretarial process for approval.

Mr. **Parker.** There is a notorious instance of that, if I may take a minute, with the Colville water code, for example. That is the very hardest kind of question because obviously water is part of the trust.

The Secretary has to have some sort of control over how water is regulated on the reservation. My understanding of the policy that has been pursued by the Secretary of the Interior in disapproving initiatives by the Colville tribes has been for policy reasons, not trust protection reasons.

Commissioner **Dial**. Do you feel it is necessary for a tribe to have a tribal government in order to receive any Federal funds?

Mr. **Parker**. I am not sure I understand your question.

Commissioner **Dial**. I am speaking of off-reservation Indians, for tribal governments, whether they exist.

Mr. **Parker**. I don't think we would take that position. I don't think there has to be a political entity which is on-going and functioning in order for the tribe to consider itself a tribe and to have a relationship with the Federal Government.

Chairman **Abourezk**. What if members of a tribe, even a minority of the tribe, did not want to have a central tribal government, but instead chose to stay on a reservation, and that there should be several governments?

In other words, to break down and decentralize that, there is not control all in one power center. Have you addressed that question at all?

In other words, the Government has said in the Indian Reorganization Act that there shall be constitutions, and the tribe itself will elect the government. They told them to do it.

Do you think that the members of the tribe have the right to change that mandate and to say: "We don't want that kind of government. We want a different kind. We want to pick our leaders differently."

They might want to break it down, for example.

Mr. **Parker**. We tried to put some discussion about that issue in our introductory chapters. We went through philosophies and also in the proposed amendment to the Indian Reorganization Act, we proposed that the act have a language which recognizes the authority of the tribe to define the nature and structure of its own government according to the tribal definition, which in some cases might be more attuned to the traditional way in which the tribal community or society operates.

That is an option the tribe certainly has and should be something that they know they have. I won't go into the rest of that.

Commissioner **Deer**. You recommend reviewing or amending title 25, United States Code, section 476, to remove the Secretarial review and control of a tribe's choice of legal counsel. What evidence do you have of the desirability of this?

What evidence do you have to support the desirability of this proposal?

Mr. **Parker**. As to the question of choice of counsel and setting fees: We don't have a huge amount of documentation on that particular issue which I think is a fairly narrow question.

Our proposed recommendation to amend to eliminate Secretarial review and approval is simply something that is a broad ranging thing that is consistent with a theory as to how the tribe should be treated as a government by the agent of the trustee.

We have documentation in our report of the findings based on interviews and surveys, testimony at hearings, and so on that this is something that the tribes want.

On specific questions of the approval of counsel and setting fees: I don't think we have extensive documentation of that. It is something that is consistent with the overall theory.

Commissioner **Deer**. Did you study the legislative history of the Indian Reorganization Act in this?

Mr. **Parker**. Yes.

Chairman **Abourezk**. If there are no more questions, I want to express the thanks of the Commission for the task force's work and for your report and the contribution you made to this entire study.

Thank you very much. We will adjourn now until 2 o'clock.

[Whereupon, at 1:25 p.m., the hearing was recessed to reconvene at 2 p.m., this same day.]

### AFTERNOON SESSION

Chairman ABOUREZK. The Commission will resume its deliberations. This phase, and I don't think we are going to take too long today, but I am going to ask the staff to describe in brief detail their proposed plan of procedures for writing the report and giving it out, and then we will have the Commission make its recommendations.

## STATEMENT OF ERNEST L. STEVENS, STAFF DIRECTOR, AMERICAN INDIAN POLICY REVIEW COMMISSION

Mr. STEVENS. Mr. Chairman, we have prepared a plan of operation which, if approved, would amend the manual of operation, which was drafted and approved last year. We have anticipated the end of the task forces and the instructions that I sent out, under your direction, was that no task force material be submitted after September 3.

I would like to emphasize that one of the reasons we have to have that is we have a January 20 deadline. As of October, we will have approximately 4 months and 20 days to complete what in fact would be a rather large book.

So it then puts us in a position of having to reevaluate our entire mission. The mission finally boils down to writing the final Commission report subject to the law in section 5A.

In our organization plan we defined the Commission staff rules. Since it is important, I would like to quickly highlight what they are, and I would like to say that the role that we have adopted, or seek to get adopted, is that of being in effect, technicians that provide the Commission with either objective or subjective review on different matters.

The Commission staff will provide the following for consideration by Commission members: To prepare staff report papers and review evaluation and analysis for the director and/or Commission members as required; prepare detailed and condensed review of each task force for consideration by the Commission members.

I would like to say I believe that there are two types of reviews that we have to do. One of them would be a review in which we would deal with the subject matter in such a way so that we would make some interpretive judgments on that.

In other words, how we feel about the different subjects. This is entirely a different kind of review than is required for what I would call a comparative analysis. We are having some fierce discussions among ourselves as to just precisely what a comparative analysis is, but in my mind's eye that means to objectively separate the contents of each task force report in such a way as to break it down into its basic elements.

I believe this can be done in any number of ways. It can be divided into certain categories. Some prefer a subject category and later on in the plan, we have a draft-type comparative analysis plan in which a subject approach is used.

In another, you can divide the report according to the issues, problems, objectives, conclusions and recommendations and then you can categorize them by the charges that are given within the legislation.

Then you can further divide it by subject matter. In order to do that, you have to take it one at a time, and when you do that with each task force, let's just confine it to the conclusions and recommendations.

What we can do is to plot and reduce the recommendations to a simple statement. Then when we finish all of them, we then can plot double, triple, quadruple overlap, gap or double or triple conflict.

Then it seems to me, just related to conclusions and recommendations, the emphasis is there. What you get into then is the reporting out of a staff function, an objective report on, like in other words, there is overlap.

There may be six or seven or eight task forces that are going to report out the same conclusions and the same recommendations in reference to a certain subject, and what you get out of that is a rather resounding recommendation.

If it is consistent with what you believe and if it is supported by proof and documentation, then it seems to me it is a rather viable thing to deal with. In other areas, I believe there will be conflict; in tribal government; in trust areas; and Federal administration.

One of the things on the side that I found and I told the two task forces—Task Force No. 3 and Task Force No. 1—that they were veering toward each other. What happened ultimately—and we are trying to get this corrected right now—is that they both ended up reporting on administration of trusts, how the trust should be administrated.

And so you have got, basically, the same kind of task force report on the same kind of subject matter. One was supposed to be working in the trust area, treaty area, and veered toward administration. Administration veered toward the trust area.

So we are trying to separate them out. Other areas won't be addressed. We found in some cases, or we are finding, that the task force will not deal with the charge.

I think that has happened twice for different reasons, once in tribal government and once in Federal administration.

Chairman **Abourezk.** Ernie, in the first draft, obviously there is going to be any number of alternative, backup conclusions that the Commission could arrive at.

The background investigative work that will appear in the Donner report, that can't change. That will be fairly well settled except for grammatical and structural changes.

Subject matter can't change. What can change, according to the wishes of the Commission, are the recommendations and conclusions. So it would be very helpful if, after you have written the background for any area, that you letter a set of recommendations: Recommendation A, recommendation B, C, D, and so on.

That would make it much easier for Commission members to decide which one they would like to support. When we come to that part, we can discuss each recommendation. Does that seem satisfactory to everybody?

It would be helpful if the staff would provide us a very clear way of setting out what those alternative recommendations are.

Mr. STEVENS. If we get all the final reports in by September 3—in line with what you were saying before—a certain time elapses so that we can do the staff work. One other thing that has happened to us right now is that we are getting these reports, and our staff has to help prepare the typing and putting them together.

When they find out we are having a meeting at a certain time, we get crowded with actually reproducing.

Chairman ABOUREZK. In our discussions this morning, we decided that we are not going to have the task force come in and give their report at the meetings. I think we ought to end that. I have discussed that with Commission members, and I think they pretty much agree with that. What might be helpful is for the staff to take those reports and then write the final report based on using all the alternative recommendations the task forces come up with.

We can either accept them or reject them as we decide so that we have done away with that interim phase of asking each task force to come in and say what they have done, when in fact we have it before us in writing, anyhow.

Any comments from the Commissioners?

Commissioner DIAL. Senator, I take it, from what you are saying, that the task forces will come up with a report and recommendations that more or less would be worded for the Congress of the United States in January?

Chairman ABOUREZK. No. You mean the Commission or the task forces?

Commissioner DIAL. I am talking about the recommendations that come from the task forces, that they present. How do you view the package that is going to the Congress on January 20?

What do you see us doing?

Chairman ABOUREZK. I visualize the Commission as producing the final product that will be the recommendations to the Congress. If we want to establish a framework, what we want to do is just say: Here is what we believe the American Indian policy ought to be, embodied in recommendations based upon findings and facts that were made by the task forces.

If the staff would take every recommendation by the task forces and put them down on paper and give the recommendations that the staff has in mind that the task forces haven't put down—I think they ought to put those down and identify them as such.

If the task forces haven't thought of anything and the staff has, they ought to put it down and say these are staff recommendaions.

Commissioner DIAL. What will you present to the Congress other than recommendations?

Chairman ABOUREZK. That's it. The background and statistical data, findings of fact, then the recommendations and conclusions.

Commissioner DIAL. Are you saying that you will probably present to the Congress maybe a 200-, 400-, or 500-page report with recommendations, or just what?

I am sure they are not going to leave their busy work and go into all of these reports and so forth. How much will the Congress need to know about the research and findings and so forth?

It seems to me that they wouldn't be quite satisfied to deal with the recommendations unless they have some background material. You wouldn't want someone to say to you, we recommend so and so, unless you have some background material.

Chairman ABOUREZK. I think that is a good point. This is something we ought to discuss. So far as the final printing of the report goes, it should contain findings of fact, statistical basis—not a lot of statistical data, not table after table, but some statistical basis for those findings of fact of course, the history as we have outlined earlier, then the conclusions and recommendations, then the work.

That is going to be quite a big point, I would say. We would have to print well over 1,000 or 2,000 or maybe even more copies. Don't they have to be distributed to libraries around the country and so on?

Mr. STEVENS. Yes.

Chairman ABOUREZK. How many copies do you think? Have you figured that out yet?

Mr. STEVENS. We haven't figured that out yet.

Chairman ABOUREZK. First of all, let me direct the staff to talk to other people who have done the Commission studies, the Land-Use Planning Commission, or National Crime Commission, or water tap or whatever, and find out.

That would be your basic printing. Then the task force reports themselves, the actual text, can be made a much smaller printing. Those could be available in all the archives and so on, if anybody wants to go beyond.

I think that is what you are getting at.

Commissioner DIAL. Yes. It would be up to the Members of Congress if they want to pursue this to go to the archives or someplace and look at the report.

Chairman ABOUREZK. That is right. There should be adequate footnoting in the report itself to direct us to where——

Mr. KICKINGBIRD. Mr. Chairman, could I suggest we don't have to make a decision at this time, although I think we should discuss alternatives. Perhaps I could send out the long article that Crossley has prepared. I think you took a look at it. It was presented to the American Association of Law Libraries to discuss some of the possibilities for the Commission.

Chairman ABOUREZK. Did you send each Commissioner a copy of that?

Mr. KICKINGBIRD. Yes, sir.

Mr. STEVENS. Mr. Chairman, I wanted to explain something. We have been doing exactly what you have already directed. Last spring we started. We met with the various commissions. As a matter of fact, one of the specialists, Paul Alexander, works for the U.S. Civil Rights Commission and completed at least one kind of report on the Southwest Indians.

So we have met with different departments. We don't have some of the details, but that is done up already and it has been worked on. It had been worked by the communications staff since April. So we have a lot of detail on that which we don't have with us, like page sizes, how many words, and so on.

I guess 750 or 1,000 pages. I don't think we will ultimately know until we are able to analyze all the conclusions, recommendations, and what we have to write.

Commissioner DIAL. Senator, if we are going to place our name on a report that goes to the Congress, I am very much concerned as to what is our position from the time of the final task force reports to the time when all of them are in, the work of the office on 2d and D Streets and our work.

Do you follow what I am saying?

Chairman ABOUREZK. Could you repeat your question?

Commissioner DIAL. I am concerned when all reports are in and the work of the Commission has begun, the role of the office and the role of the Commission. Are you going to be happy with someone to do all the work for you is what I am really saying?

Chairman ABOUREZK. I don't think I understand your question.

Commissioner BORBRIDGE. Mr. Chairman, in the same vein as we follow graphically what has occurred, it appears that at this point it has been stated that the task force reports will pretty much be as they are submitted.

Commissioner DIAL. I agree thus far.

Commissioner BORBRIDGE. It also occurs to my mind one aspect of our subsequent task is quite clearly that we are responsible for selecting out of the various options that will be recommended the ones we consider most viable and of high priority and status in terms, however, of impact on the report and the Commission production of the report.

Maybe I am ending up with the same question that you are. What occurs after the task forces themselves have submitted reports, which we have said will be remaining unchanged, and what will be the nature of input by the Commission subsequent to the submission of those reports?

Is that basically your question?

Commission DIAL. Yes. Somewhere before January 20, the Commission will have to vote on some report that goes to the Congress. Is this correct?

Chairman ABOUREZK. That is correct.

Commissioner DIAL. I simply ask the question: What will be the role of the Commissioners in that report? What will be the role of Ernie Stevens, the director, and his staff in that report?

Chairman ABOUREZK. I understand now.

Commissioner DIAL. That is what I am really saying I am really saying I don't want someone to put something in my mailbox a few days ahead of time and put my signature on it and don't have time to read it, and it is on its way to the halls of the Senate and the House.

This is what I am saying.

Chairman ABOUREZK. The reason I suggested to Ernie a few minutes ago that he put down a lot of different options is because we are going to have to answer for every word in that report.

Either we approve, disapprove, or change it to the way we like it. Every Commission member will have the right, either by himself or with others if he wants to, if he loses a vote on any recommendation, he will have the right to submit a minority view which will be printed.

So that if you disagree with something in the report, certainly people will know what your views were with regard to that disagreement.

That, I think, is fair and the traditional way to do things.

Commissioner **Dial**. Yes.

Mr. **Stevens**. I think rather than for me to read it, if you will read the staff role I think we did not presume to write the Commission role, but I think it is complementary. That is why I said objectively—reduce something to its elements.

We see our role as extracting the information and reducing it to issues which you decide on.

Commissioner **Dial**. I agree with that. That is what I see.

Mr. **Stevens**. Related to that, we have a kind of rough schedule of Commission activities that has already been changed by some actions taken today. However, here is an idea.

It provides for review of drafts in our budget. Later on you will notice that we provide for 40 man-days per Commissioner, for the actual work. This is for the actual draft review, actual discussion of issues, and so on.

Forty man-days is two man-months, and that is a lot of time, and we anticipate that we need that. We saw our staff role as one of providing objective analyses, and when called on to provide recommendations, if we are asked.

Chairman **Abourezk**. Would you turn to page 14, under item No. 1? Task force reports will be submitted no later than September 10. Is that correct?

Mr. **Stevens**. We designated September 3 for we heard the Commission was meeting on the 10th.

Chairman **Abourezk**. Well, we aren't going to have those meetings on the 9th and 10th because we decided we are not going to change the task force reports anyway. The summary review session on October 20: You will have the first draft read by then?

Mr. **Stevens**. This is what we are proposing. In order for us to get the central theme of the Commission reports, we talked about it among ourselves and we came to this conclusion.

The completions and recommendations being two different kinds, one is a central theme, we decided that in many cases there could be 50 different things in Indian affairs which could get completely lost because of our insistence at laying all that out.

We had the most important ones kind of up front, so to speak, to provide a theme for the written work. Then separate and apart from that, but also included, were all the conclusions and recommendations that are needed.

But what we want first, and kind of complementary to Commissioner Dial's question, we are asking the Commission—this is while we are talking about a comparative analysis—we want to reduce that and then reduce it to issues and then have the Commission say what should be done.

And then at that point we would proceed with the drafting of it. We would like to begin the drafting the first of October. We may have to make some adjustments. In other words, that would happen first. Then we would begin.

In many ways we have begun to draft the report. D'Arcy McNickle's historical piece will be one of the front parts. Then there will be a legal part also. That substantially is being worked on right now.

Chairman **Abourezk.** One thing I want to admonish this staff on is that everything that we have to consider at a meeting, we would like a draft of that in plenty of time so that we can go over it individually, so that we can come to the meeting prepared.

Can I say that if we set a meeting then you would have to tell me if you can get it done or not. We should have everything prepared for that meeting at least 2 weeks in advance.

If you think that is not enough time——

Commissioner **Dial.** Two weeks is right. We need 2 weeks. Right.

Chairman **Abourezk.** At least 2 weeks before the meeting we should have whatever it is that we are going to consider in hand. Can you do that?

Mr. **Stevens.** Yes, sir.

Chairman **Abourezk.** If we set a meeting, and you think you can't get it ready by then, let me know and we will reset the meeting. But we can't delay it too long, as you are more aware of the time limitations than I am.

Mr. **Stevens.** The first meeting is going to have to be rather extensive, like 2 or 3 days, if you can set it. The one where you discuss the issues in order for us to draft a Commission report.

We could go ahead and begin to draft the whole thing, and then when we get it done, it would be too hard to redraft the report after you have worked it into a theme. We would rather deal with the issues first.

Chairman **Abourezk.** All right then. We will do the issue discussion in 2 or 3 days. Let's set 3 days aside. If we finish before, OK? In the latter part of October: Is that possible?

We will discuss the issues then.

Mr. **Hall.** If I might suggest something, I think the way to save your time is to deal with the report in segments. For example, I have been mildly surprised in the last couple days to find that at least four and maybe as many as six of the task force reports are dealing in one way or another with the question of land consolidation and acquisition.

Some of them contain specific recommendations on how to deal with the issues. Some, such as task force No. 2, don't really contain any recommendations at all except to say that the problem needs to be resolved.

They refer specifically to the heirship problem which the core research staff has been doing a great deal of work on also. I would see, for example, a segment of the final report, and I take this just as an example, being devoted to the issue of land consolidation and acquisition to prepare that segment for your review.

We would extract from all the task force reports those segments of the report which deal with land consolidation, put it together with material that we have done ourselves in terms of documentation and statistics, and present them in alternative recommendations.

In one section, perhaps in dealing with that issue, we may have to deal with two, three, or four at any one time to keep it moving, but deal with that question, that segment of the report on land consolidation and acquisition, and get it out of the way in 1 day, get judgments made by the Commission as to where we want to go on the thing.

Then we would rewrite it with those judgments being incorporated. That segment of the final report would, in effect, be complete except for blending in with the other segments.

Chairman **Abourezk.** That is fine. I think that is an excellent way to do it. I would recommend, though, that on our meeting in the latter part of October that you have prepared for the Commission, and given to the Commission 2 weeks in advance, everything that we have to decide, broken down issue by issue. So keep that in mind how the actual procedure will go. At the meeting the first thing we will take is a motion to adopt some recommendation on land consolidation.

We will discuss it, change it, during the course of the meeting. That will be our markup session. We will change it as we see fit according to democratic procedures and make an adoption and will vote on the motion finally after the debate.

Then we will take the next issue that you have prepared for us. So we want you to get the issues ready, and we will deal with the issues as you present them to us. Does anybody have any changes to make in that?

Commissioner **Whitecrow.** Is this the same meeting, the sheet of paper passed out a little earlier? Is this the 2-, 3- or 4-day meeting we are talking about?

Chairman **Abourezk.** Yes.

Commissioner **Whitecrow.** Rather than late September, it will be late October?

Chairman **Abourezk.** Does that fit in with your timetable now?

Mr. **Stevens.** Yes.

Chairman **Abourezk.** So once we have adopted—and I think what we ought to do, too, one thing we do in committee meetings around here sometimes, we go through a bill and we will mark it up and will adopt amendments to it.

We vote on each amendment, then we will adopt the amendments subject to further change. We might even change our minds before we complete another whole process, if something new might come up.

So everything is adopted tentatively, subject to final change. I think that is a good idea to do, because we might want to do something different after we have looked at it. Maybe, on another part of the report, we might come back and say that doesn't fit with this over here.

So that will be the latter part of October then. If you say that is a time period that you can work in. You will come back then with a first draft of the report. We won't really need a meeting for that, for the first draft.

You can submit the first draft by mail to each Commissioner who will then have 2 or 3 weeks to go over it and write back and say we didn't agree on this or, I don't like the English in this.

Then you will come back after that first draft has been reviewed by the Commission members, you will come back with a suggestion, changes in grammar, structure or substance or whatever you think, then we will come back for a meeting on the final draft.

That is the only time we will need another meeting. Does that make sense? Am I saying that right? Then we will just adopt at that last meeting the final draft. Then on January 20, we will submit that report to Congress. Any other suggestions on this procedure?

Commissioner DIAL. Is it too far in advance to set the meeting now?

Chairman ABOUREZK. The one in October?

Commissioner DIAL. We couldn't set both of them?

Chairman ABOUREZK. I don't know. Maybe we could. Can we do it?

Mr. STEVENS. Yes. One of the questions that I have is the recess.

Chairman ABOUREZK. We are going to have a recess in October. The trouble is Congressman Meeds is running for reelection this year.

I don't know that we ought to take those final steps without his presence here.

What about right after the election, 2 or 3 days after the election in early November? Is that too late? How is this timetable?

Mr. STEVENS. I think that is kind of late because I think we have to have a draft report, final Commission report, by the middle of December. Maybe there is some way——

Chairman ABOUREZK. This could be very tough. I will discuss that with Congressman Meeds today. It would be unfair to him.

Mr. STEVENS. Another option would be to kind of press it a bit, but it is possible. Would it be possible to meet like the first day of October, then go out the second?

Probably not, but if we would push that right to the end, before he leaves or if he could stay a day over or something, we could get the preliminary right on the recess.

Chairman ABOUREZK. That is another option.

Mr. STEVENS. The only other option that I can think of is for us to meet in some way so that we can get that done and then deal with the report as soon as he is able to, and then just double back on it.

That is the only thing I can think of. In other words, the report then will be partly written, and he would have to go over it again.

Chairman ABOUREZK. Let me ask you this. What about as quickly as you prepare it, you could get three or four issues prepared early sometime in September. What if we had a separate meeting for as many issues as you could come up with?

Really, as I explained, when you are running for reelection, that is foremost in your mind. It is really unfair to make a man come back here for something.

Mr. STEVENS. One of the things that we are facing is that if we prepared the staff work like you want, I don't think there is any way that we could complete the staff work. Assume that everybody was right on time, which we know even when we tell them that is absolutely it, it doesn't end up being that, that would still bring us around the 18th of September, assuming we could do the staff work the day after they submitted it.

Chairman ABOUREZK. The latter part of September we could have a meeting. We are still in session. Congressman Meeds will be here at least half the time or more when we are in session.

Mr. RICHTMAN. There is also a meeting on September 25, that you are committed to go to.

Chairman ABOUREZK. I can't go on the 25th.

Mr. RICHTMAN. Has that been rescheduled then?

Chairman ABOUREZK. We have another day that we are trying to work out.

Mr. STEVENS. We are talking about a 2-week lead, Mr. Chairman, and if we are going to do that, and I agree with that, we cannot accomplish the staff work. You said I should tell you if we couldn't do it, so I am telling you right now.

Chairman **Abourezk**. In the latter part of September, can you get two or three issues ready?

Mr. **Stevens**. I am telling you now we can't do it. If you will give me 10 days——

Chairman **Abourezk**. On two or three issues, I think 10 days would be all right.

Mr. **Stevens**. With a 10-day time limit for two or three issues, I can do it. It is that tight because we set for September 3. Just to do an operations thing, and to read and publish some of the things, it took us 2 weeks, and we are not anywhere near where we need to be.

So we really need that time. We might be able to get it by, say taking some of the task forces, like No. 9, No. 7, the first four, something like that, and really get some of the main issues. I believe we can do that.

Chairman **Abourezk**. If you can do most everything in early September or late September, early October, we can wrap it up by early October. How does that sound?

Mr. **Stevens**. Yes, sir.

Mr. **Kickingbird**. From the standpoint of fiscal year and expenditures, October 1 and 2 dates would be ideal.

Commissioner **Borbridge**. Mr. Chairman, I would like to certainly express my concurrence with that suggestion, relaxing just for those first several issues our proposal for advanced notice.

In terms of the Commission, informal discussions indicate that we all tend toward extra leadtime. In terms of the extra time, in effect a dry run on the issues, I think it would be tremendously helpful.

I would certainly support that suggestion.

Mr. **Stevens**. We are not taking every issue all at one time. We could probably get by with 10 days, we don't need 2 full weeks, on three issues or four issues. Is the date October 1 and 2 or what?

Chairman **Abourezk**. If you can do two or three issues in late September and do as many more as you can get ready by early October, then I think that would take care of everybody's interests as far as time is concerned.

What do you think?

Mr. **Stevens**. Let me put it in a more positive way. We can get three or four issues prepared to mail to everybody by September 20.

Chairman **Abourezk**. So that means September 30 for a meeting? How does that sound?

Mr. **Kickingbird**. One of the essential things is that we get the materials broken down, that you do read those materials. That may make it possible for us to have some of this by mail: the issue, development, conclusions, suggestions, incorporations of that material, and exchange of ideas.

That is possibly one way we could have part of this, so that we might be able to do it possibly in early October or late September dates, and again possibly just following election at a time when we might find it convenient.

The danger is in what all of us are trying to avoid, bogging this all up so that we are depending on a certain time, going too deep, and money enters into the same problems the task forces encountered; that is, starting the work too late.

Mr. **Stevens**. I would say September 30 and then sometime early or middle October. If we had two meetings like that.

Chairman **Abourezk**. We are trying to contact Lloyd Meeds. I am not sure we can set exact dates right now, but at least one thing that we have settled pretty much, or at least there has been no objection to, is the procedure under which we will proceed.

You have that clear in your mind how we will do it, and we will try to work these dates out as best we can.

Mr. **Stevens**. This operations plan is acceptable, and time concept is right on line in terms of what you said and what the people are asking for. That is exactly how the staff sees it.

It is a technical and writing job for us, offering up alternatives.

Chairman **Abourezk**. All right. Does the Commission have any other questions they would like to pose on this operations plan? Anything you want to change on it?

Commissioner **Whitecrow**. What we are saying, Mr. Chairman, is we are going to be meeting, there will be no further meetings for the Commission in this current fiscal year?

Chairman **Abourezk**. It looks that way; yes.

Commissioner **Whitecrow**. As the operational plan calls for here, we will have only two Commission meetings, is that correct, in the next fiscal year?

Mr. **Stevens**. The next one—I believe three meetings. We do have to have three before we write that, no matter what.

Chairman **Abourezk**. The third one is submitting the final report?

Mr. **Stevens**. No; to review the draft. We need a second issue meeting, then to review the reports. and then to approve it.

Chairman **Abourezk**. The review and approve could be the same meeting.

Mr. **Stevens**. Let me put it this way. If you are not satisfied with it, we want to have a final draft by the middle of December. In case you require changes, there again you are going to get into a situation.

I don't know if Lloyd will be available or not, but possibly for some other reason your congressional Members may not be available until the 13th of January. It may be you will want to look at it before.

In other words, we don't have to do it that way. We can just have another month of time. We had provided for a final draft review in case you required extensive changes so it would give us a month to work on it.

Chairman **Abourezk**. I don't think the changes after the second draft will be very significant at all. It would be more just a proofreading. I think we should have settled all the issues by then, so that there won't be any subsequent meeting.

Mr. **Stevens**. The last time would be around the 20th for a formal approval. You may want to do some other things, presentation of the report and all that.

Mr. **Kickingbird**. One of the other things in our minds is the task force. Some of them are doing 20-hour days, 7 days a week, and seeming to go crazy. We want to try to avoid any kind of rush.

I think we should go through a few of these task force reports to see a few rough pages with wrong verb tenses and that kind of thing. They just didn't have time to smooth out the report as they would have liked to.

Chairman **Abourezk.** I agree we ought not to do that. Can you do two or three issues by September 25? You think the 20th is the day you can get your work done? Can you move that up 6 days?

Can you do it by the 14th or 15th—have your issues in the mail to the Commissioners?

Mr. **Stevens.** We can pick out some issues. In other words, here is the thing. You are talking about doing a comparative analysis. We could temporarily set part of that aside and pull it basically by using a method like Gil is talking about, identifying certain issues and pulling them out of all the reports.

In that way we can do that, like land, something to do with tribal self-government. We can pick three or four main things that we know are going to be issues and examine all the task force reports.

In that way we could do it except for one thing. You would have to stand fast on that September 3 submission date from all task forces which we have established. Otherwise, if they go past that and insist that we consider their material, we will not physically be able to do that and meet what you are requiring.

Chairman **Abourezk.** We will issue a new supply of whips.

Mr. **Stevens.** I have already worn out seven.

Mr. **Hall.** We still do not have 1 complete task force report, and I am scared to death that we are not going to have 11 task force reports on September 3. We can press and encourage as much as possible and just hope for the best.

Mr. **Stevens.** What I have done is set a deadline. What I am saying is that that will be a point if that deadline is preserved. What I am saying is September 3, we have got what we have got. If that is the case, then we can proceed and can finish by that time.

Chairman **Abourezk.** There is another possibility that I never even want to think about, but we may have to do this to accommodate the Members who are running for reelection this year; that is, to extend the time of the formal report from the Commission by maybe 1 or 2 months.

Can we do so without asking for money?

Mr. **Stevens.** I think we can do that, but we would have to readjust our budgets lately. The one thing we would have to do is to also have Kirke check on the legislative language in that we have 6 months from the time that the task forces, I don't remember the exact words, in which we have to have the Commission report done, but we have three final dates.

I will ask him to examine the legislation in terms of the time that the Commission report is due.

Chairman **Abourezk.** We can change that, but I do not want to ask for any additional money from the Congress.

Mr. **Stevens.** First Kirke will make an interpretive legal judgment as to whether we can do this without changing the law, and we can move that 2 weeks, I think.

Chairman **Abourezk**. If we move it 2 weeks, will it then allow us to do the major part of this work in November? I think the election is November 2, then we will all be here.

Mr. **Stevens**. If Kirke can make it a favorable judgment, we can move the date to February 20.

Chairman **Abourezk**. Then we will find out if we can do it without additional money?

Mr. **Stevens**. I don't believe we will have to. It will be nice but I don't believe we will have to have additional money.

Chairman **Abourezk**. Well, give us a definite answer on that because that is important in deciding. That is definite then?

Mr. **Stevens**. Yes, sir. What we are talking about is extending the time. If we should be able to get work that we have to do pretty well by January 20, I don't see any reason why we should have to extend.

The six Commission members should be adequate to wait for the last meeting.

Chairman **Abourezk**. All right. How does that sound to members of the Commission? We are trying to extend in accommodation to a congressional Member. Is that satisfactory to everybody?

All right. Then Kirke, if you will give us a legal opinion on extending that date even 45 days, more than 30, it will take a lot of time.

Mr. **Stevens**. I don't have to be an attorney to know you can't stretch it that far. You would have to amend the legislation I am sure.

Chairman **Abourezk**. We can do that without much problem, just so we don't ask for extra money. We can get anything we want.

Mr. **Stevens**. That would give us time so that when the congressional Members get back we would have plenty of time to accomplish some of these things. On the budget, like I said, the Commissioners would have 40 man-days. That is 2 man-months.

Chairman **Abourezk**. In November we are recessed. Congress will not be in session, and we will be much more relaxed as far as recall is concerned. So, (1), find out how far we can extend it; and (2), set up a new timetable based upon that extension.

Commissioner **Borbridge**. I would like to ask a question of the chairman. We are suggesting, as a format, that we would deal with the preliminaries. Possibly three issues the first meeting or would the suggestion we discussed be altered by the outcome of that?

Chairman **Abourezk**. Then we should have a 3-day meeting. If we are given this time extension, under the law, then we should go back to our original plan of deciding all of the issues at one 2- or 3-day meeting, or whatever is necessary.

Is that satisfactory? It is better to do it that way because of travel expenses.

Commissioner **Borbridge**. Once the Commission in its next meeting, assuming this all works out, has worked out extracting the issues, establishing priorities, and in effect giving the staff direction for the draft of the report and the substance of the report it desires, the staff will so proceed.

Then there would be the result of the staff which I would see as requiring our final approval. In effect, that the staff product is consistent with our directives. Then there is a final report at a later time.

I am just wondering whether the Commission is clear whether we want to regard this as just a routine matter or do we need to meet to appove the final report which is the final product of this Commission after all?

Chairman **Abourezk**. I think we have to meet to approve the final report. It is absolutely necessary.

Anything else?

Commissioner **Whitecrow**. What we are talking about here then is approximately what? As it is estimated right now, Ernie, how many man-days will be necessary? I will personally have to arrange my time schedule to coincide with this.

Mr. **Stevens**. At least 40 man-days budgeted in 6 months.

Commissioner **Whitecrow**. Is that per Commissioner or the entire Commission?

Mr. **Stevens**. Our experience is it doesn't average quite that, but that would be the average. That is 2 working months out of 6 working months. It is a lot of time.

Mr. **Richtman**. It is 40 days per Commissioner starting October 1.

Commissioner **Whitecrow**. I had better seek another job if I am going to devote that much time in the next 6 months.

Mr. **Stevens**. This may not be required exactly, but we wanted to provide for it, so we were assured of the maximum Commission participation.

Chairman **Abourezk**. So that item No. 2 on page 14 of the summary review section provide you can find legal authority for us to do this in November. That would be set some time in early November after the elections, right?

Mr. **Stevens**. Yes, sir.

Chairman **Abourezk**. Then we will read just everything else accordingly.

Commissioner **Dial**. If the extension comes, the first meeting will be when?

Chairman **Abourezk**. Then the first meeting will be some time in early November. In fact, if we set a 30-day extension, it looks to me like we are not even going to need 30 days totally. If we set the first meeting November 5 or November 10, Somewhere in there, we still have what we want, at least 2 weeks prior to mail these things out.

Does anybody know what day the election is?

Commissioner **Dial**. It would be November 2.

Chairman **Abourezk** You are going to have to give congressional Members a couple of weeks after the election to study the reports. So, roughly, somewhere in the middle of November would be the first meeting to decide the issues themselves.

Mr. **Stevens**. We have got all kinds of dates here now. Are we still going to do the first one with the first issues in it?

Chairman **Abourezk**. No; we will have one major meeting of 2 or 3 days to decide all the issues roughly in the middle of November. The quicker you can get a date set for that, the better it will be for everybody.

I think Commissioner Dial will be back to teach school then, and Jake——

Commissioner **Whitecrow**. He will be looking for another job.

Mr. **Stevens** How about Wednesday, Thursday, and Friday, November 17, 18, and 19?

Commissioner **Dial**. How about Thursday, Friday, and Saturday 18, 19, and 20?

Chairman **Abourezk**. What day is Thanksgiving?

Commissioner **Dial**. November 25.

Chairman **Abourezk**. Thursday, Friday, and Saturday was what dates?

Commissioner **Whitecrow**. 18, 19, and 20.

Commissioner **Dial**. That would be a good time, 18, 19, and 20.

Chairman **Abourezk**. Congressman Meeds, I am informed, is on the way over. If he doesn't want the extension—we are doing it for him anyway—we won't do it.

Mr. **Stevens**. We like the extension better in terms of budget. You still have the same amount of work, and the same amount of work costs the same amount of money no matter which way you do it.

So if we have another month, it gives us more time. The cost is not any different. The work is not any different. That is what we are looking at. So now that we are into that, that would be our preference.

In other words, it would not cost Congress or the Commission any additional money to make that extension.

Commissioner **Dial**. Would this extend the task force time frame, or would it still stay the same?

Chairman **Abourezk**. I don't think we ought to change the task force time.

Commissioner **Dial**. No; I don't.

Commissioner **Whitecrow**. Ernie, will this give you enough time if we have these meetings the 18th through the 20th of November? Will that give you enough time to prepare a first draft?

Mr. **Stevens**. Yes.

Commissioner **Whitecrow**. We will come back some time then in December or January?

Mr. **Stevens**. Coincidentally, on page 14, you will see on our review the first draft proposal is scheduled for November 17. In other words, we are right on the money there. That would be the time that we believe we can have the first draft, and it is right on our schedule.

From there on we would be stringing the work out a little more. That is why I like that extra month, if we can work it that way.

Commissioner **Whitecrow**. We have so many dates floating around here. I am not sure which ones we are talking about. Could we ask someone from the staff here to perhaps put this on a graph so all of us could understand it?

Mr. **Stevens**. Which is that, the schedule?

Commissioner **Whitecrow**. All of these various dates.

Commissioner **Dial**. We haven't set any dates yet.

Mr. **Stevens**. On page 14, then, we can rework this.

Commissioner **Borbridge**. I think the confusion is we are dealing with two alternatives and we don't know which one we are going to try to develop.

Mr. **Stevens**. That is why I prefer, now that we are into it, the second one because it seems to me there is no extra money involved. We have so much work to do, and we intend to work load it.

So all we are going to do is spread it out some more. Some staff will leave earlier and some of the part-time people will work at a different time. We will have a little longer to wait.

Basically the money and the work is the same; like the Commissioners on the budget, they will be spreading 40 days over 6 months instead of 5 months.

Commissioner Dial. When is D'Arcy McNickles' report due?

Mr. Stevens. He is giving us a draft next week. That is going to be in the front part of the final report. We just discovered it was going to be 100 pages or thereabouts.

So I have asked him to give us approximately a 16-page summary, typewritten pages, which would give us three to four pages on one of this size printed books, which is quite a bit, that would cover the history and policy.

Congressman Meeds. As I understand it now: We are discussing some alternatives, some kind of two or three meetings through September, October, and November and a final report in January of 1977, or perhaps one meeting earlier in September and a longer meeting for 3 or 4 days in November after the election, after which the final report will be written?

Mr. Stevens. Yes, sir.

Congressman Meeds. Is that basically it?

Mr. Stevens. Yes, sir.

Congressman Meeds. My only question is: Do you think you will have enough time from a meeting in November? As I understood this, a 30-day extension would make it when?

Mr. Stevens. February 20.

Congressman Meeds. You would have enough time between the meeting in November through February 20 to finish your report?

Mr. Stevens. Yes, sir. You see we had originally scheduled our first draft to be finished by the 17th of November which is approximately somewhere about that time anyway.

As I pointed out to the Commission before, we are work loading it so that it will be the same amount of work for the same amount of money. Only it will be spread over 1 more month.

That would really be much better, actually.

Congressman Meeds. What happened to this original schedule of review and formal acceptance of task force, September 9 and 10?

Mr. Stevens. This morning, the Commissioners decided not to do the September 9 and 10, because they were not going to mark up the rest of the reports. So then we started talking about reviewing some of the issues in late September, and that is how we got into this discussion.

Congressman Meeds. How about trying to get 2 or 3 days in September and in that way resolve these policy decisions and get started on the first draft so that the work that you would have to do after the November meeting would be considerably less.

Could that be worked out?

Mr. Stevens. I need to ask you something—if we could press this—the other thing that came up is that we wanted more leadtime for the Commissioners to see the staff work.

We finally have agreed on 10 days. How late in September could you meet? The later the better.

Congressman **Meeds**. Just speaking for myself, if we met in September, I would have to take a Saturday, a Sunday, and maybe a Friday or Monday.

Mr. **Stevens**. At the end of September?

Congressman **Meeds**. The major problem of meeting the last few days of September and first part of October is that the House and Senate will be trying to adjourn. You know how that is, like today, only worse.

My thinking is if we are going to extend it, we might as well extend it for 60 days. Can we go to February 20 without any amendment?

Mr. **Stevens**. I believe so. Kirke is going to have to get an opinion on that, but I believe that we can do that.

Mr. **Kickingbird**. The time schedules that we are currently operating under was set in legislation. The task forces were to last 1 year from the date of activation, and then 6 months from the date of the task force final report, we were to have in the Commission's final report.

Now for our current operating schedule, we selected the first of the three activation dates. We selected the July 20 date, so January 20 is our final current date for the final report. It is 6 months from the July 20 date.

If we select the last due date, that is the third activation date, which is the latest activation date, August 20 is the date we are due, then our final Commission report would be due February 20.

This would require no alteration or amendment to existing law. This is one of the things we never really talked about. We just kind of held that back as a potential clarification in case we would run into a time problem, which we apparently have.

Congressman **Meeds**. You think you could finish the report by relatively an early date in November?

Mr. **Kickingbird**. On page 14, we have a schedule set out complying with the January 20 date. If we extend it by 1 month to February 20 and move items No. 2 through No. 6 down 1 month so that item No. 2 begins on November 17 and item No. 6 ends on February 20, this is the same working schedule that we currently have.

That also allows, by doing a summary review session of all the issues, item No. 2, is that between now and September 3 when all the task forces' material will be in; there is time for analysis.

Gil pointed out that one thing we have to do in any event, consistent with the plan for analysis that we have set out in this final format document, is to break it down into parts for different elements.

As we break those different parts down, we can put together the background justification, the logic behind it, and send those recommendations—and presumably in several or many instances it will be alternative conclusions or recommendations that we reach—for your review prior to the November 17 date.

Congressman **Meeds**. That might combine a number of task forces that have dealt with similar or the same issue. That is good.

Mr. **Kickingbird**. Another thing we would do is we would get those out piecemeal, not all 2 weeks prior to the November 17 date, but periodically as we develop the analysis. We could allow you a longer time for review.

We might possibly be able to set up some of these issues by letter, distributing comments, and so forth, among one another. By having such a long meeting, maybe we could settle some of these in a preliminary manner.

Congressman **Meeds**. How many days would you program for November?

Mr. **Kickingbird**. That is when we suggested about 3 days.

Mr. **Hall**. I would say that that November meeting would be the most important meeting all the way across the board, because then we are grappling with the issues and we get judgments.

After that, it is pretty much rewriting and minor changes.

Congressman **Meeds**. Right. Well, that sounds like a pretty good program to me, as a schedule. Have you talked about the plan for operation?

Mr. **Stevens**. Yes.

Congressman **Meeds**. Maybe we ought to ask the other Commission members. Did Jim seem to agree with that statement?

Commissioner **Dial**. Yes; we were just waiting for you.

Commissioner **Whitecrow**. I would like to just get these dates down firm now so that we can go ahead and schedule them.

Commissioner **Dial**. So that we will know what we are doing all the way through. When you send out communications saying it will be a certain date, and there will be no conflicts, now that we are all here, let's set the dates, as near as possible, way in advance, and we will know how to work to it.

Mr. **Stevens**. That will be fine.

Congressman **Meeds**. Could you go over that schedule now by subject matter and date so that we can all mark it down here?

Mr. **Stevens**. The summary review discussion would be November 17—Commissioner Dial brought up November 18. That was the 3-day session.

Commissioner **Dial**. Speaking for myself, I would like Friday, Saturday, Sunday, and Monday. If it is necessary to come on a Thursday, I can do it. I don't have any classes on Friday or Mondays or Saturdays or Sundays, but I definitely don't like Wednesdays and Thursdays because it means I miss 2 class days.

Congressman **Meeds**. Would it be better November 18, 19, and 20; or 19, 20, and 21, Friday, Saturday, and Sunday?

Commissioner **Whitecrow**. Personally, I think if we are looking at 3-day meetings and we are going to be studying a summary review of all these task forces, it may be possible we may want to go into that fourth day.

So if we would start on Wednesday, that would give us an extra day, if necessary, to take care of any questions.

Commissioner **Dial**. What is wrong with Monday?

Commissioner **Whitecrow**. What is wrong with Monday? I am stating that Wednesday, Thursday, Friday, and if we have an additional requirement for 1 more day, we could make it on Saturday.

Commissioner **Dial**. What about Friday, Saturday, Sunday, and Monday?

Commissioner **Whitecrow**. It is fine with me. I've got every weekend tied up already.

Commissioner **Dial.** I like Friday, Saturday, Sunday, and Monday, and Louis likes that, too.

Commissioner **Borbridge.** There will be no lobbying for dates.

Commissioner **Whitecrow.** So we are talking about November 19, 20, 21, and 22?

Congressman **Meeds.** Possibly 22.

Mr. **Stevens.** That would be 4 days—Friday, Saturday, Sunday, and Monday.

Commissioner **Meeds.** Is there any objection to Friday, Saturday, Sunday, and possibly Monday, blocking out that time for the review summary of recommendations and findings?

Commissioner **Whitecrow.** We are talking about November now?

Congressman **Meeds.** That is correct.

Then we will tentatively accept with no objections to that schedule. When would we review the first draft proposal?

Mr. **Stevens.** We would review the first draft on December 16. That would be Thursday, and Friday if necessary, I suppose.

Congressman **Meeds.** So we would be back then on the schedule which you had before?

Mr. **Stevens.** We will be moving up one step. All the dates will just drop. It will be the same steps, except the dates will move down.

In other words, No. 3 will be where No. 4 is, No. 4 will be where No. 5 is and so on.

Congressman **Meeds.** The final report then will be on February 20?

Mr. **Stevens.** Yes, sir.

Mr. **Kickingbird.** One slight correction. The last date, rather than August 18, will be February 18.

Commissioner **Dial.** Was there any reason for putting all these dates on Thursday?

Mr. **Stevens.** That was your school day. Do you have 2 days during the week?

Commissioner **Dial.** I have a block time of Friday and Monday and the weekend. I have classes on Tuesday through Thursday. I will be here. I have never missed a meeting.

Mr. **Stevens.** We could do it on Friday the 17th. Then you have to take the 18th if you needed it. When is your vacation?

Commissioner **Dial.** Around the 20th of December and Christmas, I guess.

Mr. **Stevens.** That would be too close. December 17 is a Friday. We had the 2 days that we anticipated on that.

Congressman **Meeds.** Are they the 16th and 17th or the 17th and 18th?

Commissioner **Dial.** As I say, I like Fridays, but if I have to get someone to take classes on Thursdays, I will be here, you know.

Chairman **Abourezk.** Does everybody agree? It seems the minute I leave the room you don't have any more conflicts.

Mr. **Stevens.** Do you want the 17th, and 18th; or 16th and 17th?

Chairman **Abourezk.** As I understand it, the 19th, 20th, and 21st.

Mr. **Stevens.** That is the previous one. We are on the next meeting, review of the draft proposals.

Chairman **Abourezk.** What day? Will it be 1 day?

Mr. **Stevens.** Two days.

Chairman **Abourezk.** We said 2 days. We may not take that long.

Mr. **Stevens.** If you take Friday, then Saturday is a possible second day.

Chairman **Abourezk.** What day is Friday?

Mr. **Stevens.** The 17th.

Chairman **Abourezk.** All right. Put down the 17th and 18th, and you are talking about December 17?

Mr. **Stevens.** Yes, sir.

Chairman **Abourezk.** That is item No. 3. Are we going to need a meeting for that first draft?

Mr. **Stevens.** Yes, sir.

Chairman **Abourezk.** All right then. Do we need a final draft review?

Mr. **Stevens.** I believe we do.

Chairman **Abourezk.** A meeting for that?

Mr. **Stevens.** Yes, sir. If we have to make some changes it would be a lot easier if we could do that at two stages.

Chairman **Abourezk.** All right. Let's set that, and and if we decide we don't need it, we can call it off later. There might be some of this we can do by mail after we make the issue decisions.

Is that agreeable with everybody?

Congressman **Meeds.** I think, Mr. Chairman, that we might be able to combine No. 4 and No. 5.

Chairman **Abourezk.** Yes; I think so.

Congressman **Meeds.** We might be able to dispense with No. 4.

Mr. **Stevens.** No. 4 and No. 5 could be combined in one meeting.

Congressman **Meeds.** The crux of the thing, I think, is going to be No. 2. If we get good input, and we all get our views expressed and get some relative unanimity in No. 2, the rest is going to be relatively easy I think.

Chairman **Abourezk.** Kirke, have you decided that definitely we can extend the life of the Commission for a month?

Mr. **Kickingbird.** Yes, sir. We can issue a formal pleading next week to offer that date.

Chairman **Abourezk.** All right. I wonder if I might impose on the Commission for a minute now and introduce an old friend of mine and his family who came from South Dakota, Lee English.

Anything else?

Congressman **Meeds.** Mr. Chairman, have we discussed staff? I am a great guy to come now and ask for time.

Chairman **Abourezk.** We have done some discussing, but that is fine.

Congressman **Meeds.** Could you give us some idea of the people who would be involved in the preparation of the final report and the summary review sessions? Is that in this book?

Mr. **Stevens.** Yes, sir. It is 41 and 42, then the organizational chart on page 7 bears on it. Those are the people and the jobs that they would do.

Chairman **Abourezk.** Those are the people that would be involved in the final report?

Mr. **Stevens.** Yes, sir; on page 7 where it shows the organizational chart. The way that we want to deal with this is that we want to use kind of an editorial review. Editorial, in that they would be putting the thing together.

We are proposing Paul Alexander, Pete Taylor, and Don Wharton.

Congressman **Meeds**. Alexander, Taylor, and Wharton for what?

Mr. **Stevens**. They would basically be the people who would quarterback the writing of it. We see our duties as multidimensional. In other words, some of us will be working more on certain subjects, but they would be lead men.

Chuck Peone is going to do the work assignments, the work loading, and the scheduling.

Congressman **Meeds**. What is his background?

Mr. **Stevens**. We have the résumés for all the staff with us. Chuck is a civil engineer presently about to get a master's degree in public administration. He is the person who originally was with those of us who just started to put together the Commission planning.

Then he went to the University of Arizona and came back this spring. He and Ray Goetting are the ones that did the staff liaison work on the BIA management study. He is a civil engineer and planner.

Congressman **Meeds**. And Alexander?

Mr. **Stevens**. He is on assignment from the U.S. Civil Rights Commission. He is the specialist for the jurisdiction task force. Paul has done reports. He did a southwest Indian report for the U.S. Civil Rights Commission.

Wharton is also a specialist. He is an attorney who is kind of a close specialist for the jursidiction task force.

Congressman **Meeds**. Taylor was——

Mr. **Stevens**. Chairman of the Indian Law Revision Task Force for the Interior Department, and is chairman of Task Force No. 9.

Congressman **Meeds**. We have seen his résumé. We had him before us.

Mr. **Stevens**. Yes. Max Richtman's administration job has turned out to be more than full time. He has to supervise preparation for an audit. We have requested a General Accounting Office audit that will start October 1, hopefully.

Chairman **Abourezk**. Has that letter gone to General Accounting Office?

Mr. **Stevens**. Yes, sir. They called me yesterday. They said they are kind of jammed for a number of reasons. They said they will try to start on schedule. I told them I would prefer if they would start as soon after October 1 as possible.

This is the time that some of our administrative staff, while some of us are doing analyzing, the others will be preparing for the audit. We want to do that as soon as possible after October 1.

Chairman **Abourezk**. For the information of the Commission: I have sent a letter to the General Accounting Office requesting that the Commission be audited. I think October 1 being the fiscal year is a good time to do it to determine whether or not the Commission has followed legal procedures in all of its expenditures, and we will be getting a copy of that report.

In fact, we might want to put a copy of that in the appendix to the report.

Mr. **Stevens**. Related to that, we wanted to do as part of the report, a kind of self-evaluation or administrative evaluation. We wanted to use that as a part of it.

Chairman Abourezk. All right. What day is the BIA management work going to be?

Mr. Stevens. September 9.

Chairman Abourezk. That will be a showing or distribution of it?

Mr. Stevens. I guess so. We need to talk about that. We were going to have a meeting September 9 and 10, and the BIA management study was to be presented to us at that time. It is written in draft now.

Chairman Abourezk. We are not having the September 9 meeting. When that is submitted, why don't you mail a copy to every Commissioner. I saw an initial presentation by the Warren King Associates of the management study.

I don't know much about management studies, but it looked to me like an excellent piece of work. To be honest with you, I was the main obstacle. I fought hard against the amendment to have the management study, and I have to be the first to admit I was wrong.

They have done an excellent job. I think everybody ought to have a management study done on them, because they really picked out the faults and things that are wrong with the BIA. They pointed out where some tremendous, traumatic changes could be done in how they run that organization.

Congressman Meeds. We will all agree that they need some traumatic changes.

Mr. Stevens. There was a third staff person, Andy Anderson, who was special consultant to us, also assigned to that. He spent a substantial amount of his time on that study.

Congressman Meeds. How much of this professional staff beginning with Paul, et cetera, will be actually involved in the writing, the consolidation, and assembling of the final report?

Mr. Stevens. Gil Hall will be handling most of the analysis and evaluation and some of the other people—Kirke--will be working with him on that.

The scheduling and review will be done by Chuck Peone and his helpers.

Congressman Meeds. Which of these people are clerical on here?

Mr. Stevens. Carole Roop, Emmeline Shipman, Deborah Pope, Barbara Thomas, Janet Hopkins. Page 42 gives the people and salaries.

Congressman Meeds. Do you feel that that will be enough clerical?

Mr. Stevens. Yes.

Congressman Meeds. What do you have as a final figure of cost with this kind of schedule?

Mr. Stevens. $263,000.

Congressman Meeds. $263,000?

Mr. Stevens. Yes, sir.

Congressman Meeds. How much do we have left?

Mr. Stevens. $263,000. We will have, I believe, some slightly over I believe we can transfer. We have been asked by the disbursing office to maintain a $3,000 to $4,000 cushion so we should carry over $3,000 to $4,000, and at the end we should have $3,000 to $4,000 left.

Mr. Richtman. We have $263,000 authorized. It will be appropriated for fiscal year 1977, that is beginning October 1. From August 1 to September 30, we have $165,000.

Congressman Meeds. If we were to agree on some additional: Would we be able to finance it, say, beginning in November?

Mr. **Richtman**. In order to do this, I think we would have to make some shifts, either terminating them earlier or combining——

Mr. **Stevens**. Or else we could go some into consultants.

Congressman **Meeds**. A person could be hired as a consultant, then, to work on the final draft?

Mr. **Stevens**. Yes, we had kind of anticipated and planned for a person—not named on here, an editorial person who is not familiar with what we call American Indian Policy Review Commission Indian jargon—who would come for a month and a half just to read it and make sure that it reads for the general public.

We provided about a month and a half for that so that is in there. That is a part of that $6.500.

Congressman **Meeds**. A number of us are impressed with a very objective, constructive critique which was done on the third quarter report of Task Force No. 1.

We would like to see that person involved in the beginning, probably acquainting himself with what we would be studying, starting on November 17.

Mr. **Stevens**. Yes, sir. If that is Mr. Wilkinson, we had already planned to do that.

Congressman **Meeds**. Mr. Wilkinson; yes.

Mr. **Stevens**. It is either him or a fellow from Brookings Institute. We thought one of those two would do that, and we have provided for it.

Congressman **Meeds**. All right.

Mr. **Stevens**. That would be part of the consultants. Possibly he could function in the capacity, too, of doing some of the editorial work. I don't know that for sure.

Congressman **Meeds**. Mr. McNickle who is a very good writer is going to do an historic overview?

Mr. **Stevens**. Yes, sir. He is doing approximately 100 pages, and that will be in one of the supplementary parts of the Commission material. Then, in the front part of the format, he will do a summarization of that which will be about 15 or 16 typewritten pages, or 3 or 4 pages in the large book size.

Congressman **Meeds**. Do you envision the kind of report which will have concise statements of recommendations, which is probably the thing that will be read by most people?

Mr. **Stevens**. Yes, sir.

Congressman **Meeds**. Which will fairly summarize all the recommendations that are ultimately made?

Mr. **Stevens**. Yes.

Congressman **Meeds**. The reason I am having to ask all these dumb questions is I haven't had time to get through your book.

Mr. **Stevens**. On page 20, part 1, will be the summary of the findings and recommendations. I think that is after the table of contents, preface, and foreword. This is the most important section of the report and should state the major elements of the Commission report organized by subject matter and so on.

If written and structured clearly and concisely, it will provide the Commission's audience with a functional tool which readily identifies the essence of the final report. It would be the theme of the Commission report, in fact.

Congressman MEEDS. That looks pretty good to me. I am just glancing at it quickly. So that will actually be structured in such a fashion as to cut across the task forces, and not necessarily to follow them.

Mr. STEVENS. Yes, sir.

Congressman MEEDS. I think it's got more logic in structure in the presentation than to follow definite task force lines.

Mr. STEVENS. Yes, sir.

Mr. KICKINGBIRD. There were some other elements, of course. In section 2, the breaking down of several paragraphs about responsibility and the way the task forces were set up.

One of the things we discussed, as a possibility of an easy way to break it down, is by subject. If we break those down and have elements, we can restructure in whatever manner is most convenient according to the wishes of the Commission members.

Congressman MEEDS. Do any of the other Commissioners have any questions or suggestions?

Commissioner WHITECROW. Ernie, I would like to ask you some questions in regard to utilization of consultants. On page 7: Continuation of personnel to continue the operation; the editorial staff layer; analysis and evaluation; scheduling and review—are the salaries for these personnel figured into the consultant requirements on page 38? Will that carry us through? Is that the money that you planned to carry us through to the completion of the report?

Mr. STEVENS. Yes. On page 38, that gives kind of a summary.

Commissioner WHITECROW. This, then, is your staff consultants, your clerical support staff, your alternate research aides, that is basically where these salaries are going to be provided?

Mr. STEVENS. Yes, sir. And we have already mentioned Mr. Wilkinson and a possible editor. That is under the consultants.

Mr. KICKINGBIRD. You might also take a look at page 41—the professional staff. We have laid out—it might be a little easier to see—from October to January, the professional staff that might be working on the analysis and breakdown.

Commissioner WHITECROW. Max, who is Jamieson?

Mr. KICKINGBIRD. Winona does the entries for our books. When I first reviewed that, I thought it was my name that was last.

Commissioner WHITECROW. That is what I thought, too, when I first looked at it. I know this may be a little bit early in discussing this, but I was wondering: What kind of plans are you making to gear down insofar as releasing equipment and turnback?

Mr. STEVENS. Max Richtman will be in charge of that. That is the reason why he has to turn out the lights. He will be in charge of transferring materials to the General Services Administration, and to the Archives.

The Commission might consider the possibility there is a new wing, I think, at the Library of Congress. Maybe we would want to talk about some of these materials being there, if they are as good as we think they may be.

Mr. RICHTMAN. Commissioner Whitecrow, we have already begun the process of returning equipment and office furniture, even some of the office space that we have received from the House Administration Committee.

That is an on-going process as we gear down.

Commissioner WHITECROW. That is not declared surplus and wouldn't be available for some Indian organization to requisition?

Mr. RICHTMAN. That is correct.

Commissioner WHITECROW. I am always looking for something to fill my office as long as I can get it on the requisition basis.

Mr. HALL. I am not so sure that under the Indian Reorganization Act there isn't provision for that.

Congressman MEEDS. Further questions or suggestions?

Commissioner DIAL. I guess you want the Commissioners to stay within this budget here? I saw that somewhere.

Commissioner BRUCE. Ernie, can you tell us what is happening as far as job placement, as far as the Commission is concerned, for those who have been terminated?

Mr. STEVENS. For the staff people—I guess it would depend on whom they are working for. The people who have been working for me are placed—they placed themselves.

Mr. RICHTMAN. We have set up a job bank, and have been trying to do everything we can to help place people as soon as they are terminated from employment. A lot have left Washington and gone to California or out West.

We have been working with the—in some cases—former professional staff on the Commission that are now elsewhere.

Mr. STEVENS. We have two staff people sitting up there who work for Senator Abourezk.

Commissioner BRUCE. Are you giving them recommendations and that sort of thing?

Mr. STEVENS. Yes, sir; whether they need them or not.

Commissioner WHITECROW. I think that is what we are all concerned with because each of these persons have taken up a portion of their life to devote to this particular activity. We really need to give them all the support that we possibly can—including yourself and including ourselves insofar as seeking new employment.

But from the standpoint of assisting all the personnel in relocation or in seeking other job opportunities, I think we should make every effort.

Mr. STEVENS. We have had a certain amount of hard time because no matter how you look at it, everybody knew that they were going to be employed for a year but, somehow or other, a lot of people wanted to stay.

At one point we counted people—out in the field, consultants, and everything—up to maybe 180 people and geared down to 22 in the space of 45 days. Of the 180, about 170 thought they were going to be one of the 22.

Commissioner WHITECROW. I don't know how much work it would be but personally I would like to have, and I haven't seen it in any of my material yet the names of everyone that has been involved in this whole process, along with at least their last known mailing address, because I would like to send each one of them a card of thanks for their efforts. I am sure some of the other Commissioners would like to do the same.

Mr. STEVENS. We will send you those addresses.

Congressman MEEDS. Any further questions or suggestions? Does that finish the staff report then?

Mr. STEVENS. Yes, sir.

Congressman MEEDS. If there is nothing further, the Commission stands adjourned.

[Whereupon, at 4:30 p.m., the meeting was adjourned.]

# MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

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SATURDAY, SEPTEMBER 25, 1976

AMERICAN INDIAN POLICY REVIEW COMMISSION,
*Portland, Oreg.*

The Commission met, pursuant to notice, at 8 a.m., in the Bonneville Power Building auditorium, 1002 NE. Holladay Street, Portland, Oreg., Senator James Abourezk (chairman) presiding.

Present: Senators Abourezk and Hatfield.

Staff present: Tony Strong.

Chairman ABOUREZK. The Amercan Indian Policy Review Commission meeting will come to order.

I would like, first of all, to welcome and acknowledge the presence of a member of the Commission, one of my colleagues in the Senate, Senator Mark Hatfield of Oregon.

I will make an opening statement and then turn to Senator Hatfield for a statement.

This Commission is meeting here today because there are very grave problems concerning one of the great resources of this region, and indeed of the Nation as well.

The fishing resources in the Northwest have been depleted over the years, and perhaps the major cause for that depletion is Federal action in the form of dams in the Columbia River and its tributaries. Those dams have had disastrous effects on the salmon and steelhead runs.

Federal action has also been important in another way. More than a century ago, this Nation made treaties with the Indian tribes of this region. Those treaties were backed up by the honor of the United States. One of the solemn promises in the treaties, that I am speaking about, was that the tribes and their members would be able to continue to fish at their off-reservation site.

The Federal courts have now interpreted those treaties and have found that they guarantee the tribes the opportunity to take up to 50 percent of the fish which would pass those sites after accounting for escapement.

The point is no longer whether Judges Boldt and Belloni were right or wrong, although most experts in Indian law expect those decisions to be interpreted that way; the point now is that we have a problem of allocating a rapidly diminishing resource.

We are here to listen and to learn the facts. We want to hear from the Indian tribes and also to listen to the non-Indian fishermen, both sport fishermen and industrial fishermen, who have deep interests in this situation.

Now, there is one voice which cannot speak here, but which I hope all of our witnesses will speak for, and that is the voice of the rivers and the resource itself.

Conflicts between the two factions that exist are never pleasant, and many of my colleagues in the Congress believe that the conflicts here can be alleviated by focusing on the resource and not on the factualism.

Accordingly, I hope that the witnesses today will speak, among other things, to the problem of improving the resource with which we are concerned.

As I said at the beginning of this statement, Federal action has had a major impact on the fish resource in this region.

Since depletion of this resource is a result of Federal action, my colleagues and myself are committed to requiring the Federal Government to do what it can to rehabilitate this source.

Now, hopefully the fishing industry and sports fishermen will then be able to find fishing in abundance, that at the same time the people of the United States will honor its commitments to the Indian people who gave up their most precious resource, their lands, in exchange for the very solemn promise given to them by the Government, the promise of allocating fishing rights to the tribes to whom those promises were made.

Now, today we will hear from witnesses who represent each point of view. I look forward to hearing the views of all of you, with the end result of reporting my findings back to the U.S. Congress, with action as quickly as possible.

I want to turn to Senator Hatfield and ask for his opening statement now.

Senator HATFIELD. Thank you very much, Mr. Chairman.

First of all, I would like to express my appreciation for your traveling to Oregon for this hearing this morning.

Fishing and wildlife, as you well know, are among our most important natural resources here, and your willingness to conduct a hearing of the American Indian Policy Review Commission here in Oregon to hear the views of citizens concerned with the management of these resources and the issue of special Indian treaty rights will result in a record that will be useful to all members of this Commission and to the Congress.

The controversy over Indian fishing and hunting rights stems most recently from court decisions in Oregon and in the State of Washington, as well.

The issue itself, however, is a natural one. Other cases have been in the courts of Montana, Idaho, Minnesota, Michigan, and Wisconsin.

These court decisions have sought to clarify the issue of who has what rights to which resources, but they have led, in some instances, to confusion and frustration.

This is due, at least in part, to the complexity of the issue itself.

Treaties which have been interpreted to guarantee a given percentage of fish in particular areas can be difficult for a State management agency to administer.

For sport and commercial fishermen, these interpretations may be viewed as additional restrictions on an already diminishing resource.

For Native Americans, failure to vigorously enforce the court decisions may be seen as one more failure on the part of the Government to live up to its legal commitments.

These varying perspectives of the concerned parties often lead to confrontation in and out of the courtroom rather than cooperation in resolving the basic resource issue.

Each of the groups interested in access to the wildlife should have at least one goal in common: to increase the resource for all users.

The Federal Government has a major responsibility in this area for our coastal waters. The Congress has passed legislation to create a 200-mile economic zone over which the Federal Government can exercise jurisdiction over the fisheries resource.

This law will take effect if the Law of the Sea Conference is not successful in resolving the issue in the near future.

The Federal Government can and must also do much more to increase the resource base through more vigorous fish hatchery and rearing programs.

For many reasons, including the construction of dams for power, navigation, and flood control, the resource base is declining and this trend must be reversed.

It is my hope that this Commission will be able to make positive and constructive recommendations to the Congress and to the American people to resolve the conflicts relating to Indian fishing and hunting rights.

I believe this hearing will be useful in the process and I am grateful to those who have appeared here this morning to offer testimony, and for making the contributions that I know they will be making.

Mr. Chairman, welcome to the State of Oregon. I do recognize that you had to make a decision between going to South Dakota and Oregon. I think you have made a wise one and an obvious one.

Chairman Abourezk. Thank you, Senator Hatfield.

I should make it clear, before we begin with the witnesses, that I am here at the request of Senator Hatfield and Senator Packwood.

And Mark Hatfield, if you see my arm hanging limp, you will know exactly why I come to Oregon instead of South Dakota today.

The first witness will be Jack Steiwert, Chairman of the Fish and Wildlife Commission, and his people who are going to accompany him.

## STATEMENT OF JACK STEIWERT, CHAIRMAN, OREGON FISH AND WILDLIFE COMMISSION, ACCOMPANIED BY BEVERLY HALL, OREGON ATTORNEY GENERAL'S OFFICE; AND JACK DONALDSON, DIRECTOR, OREGON FISH AND WILDLIFE COMMISSION

Mr. Steiwert. Good morning, Mr. Chairman.

I have with me this morning on my left, Beverly Hall from the Oregon Attorney General's Office, and on my right is Director of the Fish and Wildlife Commission in Oregon, Dr. Jack Donaldson.

Chairman Abourezk. I would like to welcome all of you to the hearings.

Mr. Steiwert. My name is Jack Steiwert and I am chairman of the Oregon Fish and Wildlife Commission.

I have been asked to read the following statement by the Honorable Robert Straub, Governor of Oregon.

Governor Straub regrets that other commitments prevent him from being here today in person.

And incidentally, I might point out at this time that this statement has been reviewed by the Attorney General, Lee Johnson, and he approves it in its entirety.

## STATEMENT OF HON. ROBERT STRAUB, GOVERNOR, STATE OF OREGON, AS READ BY JACK STEIWERT

The subject of Indian hunting and fishing rights is one which is causing an increasing number of problems for the State of Oregon, and we welcome the opportunity to discuss these issues here today. Oregon certainly supports the legitimate aspiration of Indian tribes, and is anxious to accommodate them.

We recognize that Federal court decisions have held that certain Indian tribes have federally protected treaty rights to hunt and fish, and we are sympathetic to the desires of Indian tribes to adhere to their traditional values.

However, we also recognize our responsibility to conserve our economic and natural resources, and to enable our non-Indian citizens to have the opportunity to share in Oregon's fish and wildlife resource. We hope that you will not be unsympathetic to this concern.

While the Federal Government has to some extent recognized its obligation to provide mitigation funds for dam losses, it has generally ignored its responsibility to share in the costs that result when a State's natural resources are delegated, by Federal court decision, to Indian tribes claiming federally protected treaty rights.

This is particularly unfortunate in light of the fact that most State-financed fish and wildlife programs are paid for out of the license fee of non-Indian citizens and State taxes.

Oregon has only two federally recognized Indian tribes living on reservations established by Federal treaty.

These tribes are the Warm Springs and the Umatillas, which are sometimes referred to as the Columbia River Treaty Tribes.

The State does not attempt to regulate hunting and fishing within the boundaries of their reservations.

Although regulation of the off-reservation commercial fishing rights of these Columbia River treaty tribes has been the subject of considerable litigation in recent years, we are hopeful that these matters will be resolved in the near future, so that both the States and the Columbia River treaty tribes will be able to concentrate their efforts on augmenting the resource rather than the court record. Because this matter is now before the Federal court, we do not wish to testify further on it at this time.

What we do want to discuss with you here today is the fairly recent and increasingly complicated question of the State's jurisdiction to regulate hunting and fishing by terminated tribes.

We view the hunting and fishing rights issue as merely one manifestation of a mounting legal challenge by terminated Indian tribes to our State's jurisdiction over its resources and its citizenry, and although our discussion today will focus on hunting and fishing, we are also concerned with the precedent for other areas of State jurisdiction which are foreshadowed by this issue.

You no doubt recall that in 1954 Congress adopted a policy of terminating Federal supervision and guardianship over many Indian tribes. The idea was to put these Indian people on an equal footing with non-Indians, and to speed their assimilation into the general citizenry.

In Oregon, the terminated tribes are the Klamath, the Confederated Tribes of the Grand Ronde Community, and the Confederated Tribes of the Siletz Indians, and about 60 individual tribes.

Senator, I believe you have a list of the 60 individual tribes, and I will not recite them all.

A recent decision of a Federal Court, *Kimball* v. *Callahan*, holds that the Klamath Indians still have, by treaty, an exclusive right to hunt and fish on their former reservation, despite the fact that they sold their lands for several million dollars.

The former Klamath Reservation of approximately 1.2 million acres at the time of termination, includes the Klamath National Wildlife Refuge and some privately owned land, which, under the court's decision, may now be used by the Klamaths for hunting and fishing.

The *Klamath* case has inspired other terminated tribes to claim that they have the right to unlimited hunting and fishing on Federal lands, and even on lands owned privately or by the State.

The Coos, Lower Umpqua, and Suislaw Indians have issued an "Earth rights" declaration listing what they maintain are still valid treaties or agreements, and adopting their own hunting and fishing regulations.

They claim these rights cover most of the land from Tenmile Creek, which is north of Florence, to Coos Bay, and inland to the Coast Range, as well as seaward to 12 miles.

In a like manner, the Upper Umpquas have issued a tribal wildlife management plan covering a similar area. All of these groups have announced their intention to disregard State hunting and fishing regulations.

These tribes, which were terminated at the same time as the Klamaths, in 1954, can be laying the basis for a suit in Federal court to establish that their hunting and fishing rights survived termination, based on the Ninth Circuit's decision in *Kimball* v. *Callahan*.

If successful, these rights will affect several hundred thousand acres rich in fish and wildlife, and much of which is privately owned.

In addition, some of the other tribes which were terminated in 1954 may claim to have some remaining hunting and fishing rights on the original Coast Indian Reserve of 1.4 million acres, an area which covers a large portion of the remainder of the Oregon coast and includes seven major salmon and steelhead producing rivers.

Altogether, the former reservations of terminated Oregon tribes included slightly over 6 million acres and many of our coastal streams.

Moreover, unlike the Columbia River, these coastal streams simply cannot support a commercial fishery by Indians or anyone else. Gillnets stretched from bank to bank can decimate an entire run of fish.

Obviously, we are headed for a serious confrontation which this Commission could help avert by recommending necessary Federal legislation to compensate the tribes for any valid rights which may have been taken from them.

Any obligation owed to the Indian people is a national one and must be so recognized. It cannot be satisfied solely at the expense of State resources and the non-Indian citizens residing in the State.

The creation of special rights for a small group has lead to resentment by the rest of the citizenry.

I believe it is extremely important to future relations between the State of Oregon and its terminated Indians that legislation affecting this State does not become a vehicle for the limitation of State jurisdiction over hunting and fishing by terminated Indians.

The State of Oregon hopes that this Commission recommends legislation which will further the legitimate aspirations of our Indian people while recognizing that any hunting and fishing rights which survive termination, must, in fairness to the resource and to the State's non-Indian citizens, survive in the form of a claim against the United States for compensation.

Mr. Chairman, that concludes the statement by Governor Straub.

If there are any questions, we would be happy to try and answer them for you.

Chairman ABOUREZK. Thank you very much.

The first question I have to ask you, is it the State's position that when termination occurred in 1954 of all of these tribes, that that automatically terminated the treaty obligations of the United States?

Mr. STEIWERT. I will refer that question to Ms. Hall.

Ms. HALL. Well, that is the *Kimball* v. *Callahan* decision that said it did not terminate the Klamath Treaty hunting and fishing rights.

We have no decisions on any other tribes.

Chairman ABOUREZK. What I am asking is your State's position. We know what the court case said.

What is the State's position in this matter?

Ms. HALL. We don't know because of the court decision.

Chairman ABOUREZK. You don't have a position or you do have a position—which one?

Ms. HALL. Our position is that we don't know whether the Termination Act terminated all of their treaty rights or not. But if it didn't, with respect to hunting and fishing rights, then we think that this matter should be settled by setting up some kind of a claims commission like the Indian Claims Commission or some other mechanism.

We feel that Congress should set up some kind of mechanism to determine whether they have any remaining treaty rights. And if they do, then they should be compensated for them.

Chairman ABOUREZK. That is what I am trying to find out, what your position is.

As I take it, from your answer, you are saying that your position is they have been terminated, therefore, their treaty rights are extinguished, and therefore, Congress ought to pay them.

Ms. HALL. No; we don't know.

Chairman ABOUREZK. Excuse me, if you would let me finish my statement.

In other words, your position is if the treaty rights were terminated, then the Congress ought to compensate the tribes for those extinguished treaty rights.

Now, is that your position?

Ms. HALL. Yes; and further, if they still had treaty hunting and fishing rights—I am speaking only of terminated tribes—then Congress should buy them out and settle the matter.

I think that would be the fairest solution for the Indians and the non-Indians.

Chairman ABOUREZK. Secondly, your position is: If they do have treaty rights that are still viable, then those treaty rights should be bought out by the Government.

What then if the Indians don't want to sell their treaty rights?

Ms. HALL. I suppose that is a problem Congress is going to have to decide.

It is a representative democracy.

That is going to be one of the problems. Many of the Indians have said they are not interested in hunting and fishing. Many of them have said they are so——

Chairman ABOUREZK. Let me ask you this: If the Federal Government recognizes its obligation to the Indian people, as a result of the very solemn and grave promises that the Government made 100 years ago to the Indians—I don't know that anybody in this State or this country wants to take our promises lightly. I don't think they do. Maybe they do, but I wouldn't think so.

If we decide to fulfill those obligations to the Indian people as a result of those treaties, and if we also desire—I am talking about the Federal Government—to afford some protection to the non-Indians in this State, who also feel very strongly that they have fishing rights of their own: What is your position, your comments, or your views on what you think the Government ought to do to try and satisfy both sides? What should happen?

Dr. DONALDSON. I am Jack Donaldson, director of the Oregon Department of Fish and Wildlife.

Senator, this is a strictly economic question. I am sure you appreciate the position we are placed in to answer that at this time.

We have entertained these thoughts. We would need some time to think this through very carefully—the position it puts us in.

We do understand that the jurisdiction over fish and wildlife management is a State responsibility.

The complexities that we have stated in our statement, as the position of the State, was brought on by a proliferation of these extended rights after termination. It presents an extremely complex problem in fish and wildlife management.

I am sure you can appreciate that. So I would ask that we be given time to consider this. I would hate to commit at this particular time on that direction. Our position is that we want to work with these people.

I think our record is very obvious in the case of the Columbia River. We have very carefully separated this today. We want to solve that problem, recognizing existing reservations, existing treaties, and to give a fair and equitable proportioning of that run so we can get back to the business of good management.

I don't want to be put in that position over the entire State or piece-by-piece if we can possibly avoid it.

I think there are solutions.

We want to meet with the people. We are openminded, but we do maintain our right to regulate these fisheries.

That was more of a position comment than an answer. I am sorry.

Chairman **Abourezk**. That is all right. I understand that because it is a very complex question. I am sure that you would want to undertake substantial review on the answer to it.

I am given to understand that you have just come into the job of Director of the Commission. Is that correct?

Dr. **Donaldson**. That is right, sir.

Chairman **Abourezk**. Have you had a chance yet to meet, as a representative of the State, with the Indian tribes themselves or their representatives?

Dr. **Donaldson**. I came into the position the 1st of August. I have spent 75 percent of my time on Indian relations. These have been almost 100 percent on the Columbia River because of the magnitude of that problem. And they are setting regulations on that river during August and September that are very important to Indians, as well as non-Indians.

I recognize that we are in a position of litigation in *United States* v. *Oregon*, and I have spent considerable time and will continue on a very personal one on one type of relationship with these people to try to resolve this particular issue.

I will do likewise, where necessary, with any of the other groups. It is just that my time in the first almost 2 months now has been dedicated to the Columbia River situation. I, frankly, would like to say I am very encouraged. I feel that we are making progress.

Chairman **Abourezk**. The meetings that you have had with the Indian tribes: Do they consist of trying now or have you met with the view toward trying to solve it in the future—trying to come to some kind of agreement? What has the direction of those meetings been?

Dr. **Donaldson**. I am getting some legal help here. Excuse me for a moment.

As you well recognize, this is a matter in litigation at the present time and we are having, I would say again, very substantive suggestions that I hope will lead to solutions. We are not looking at short term solutions.

Does that answer your question?

Chairman **Abourezk**. Yes; in a way.

I think before we settle the fishing rights, we are going to have to give Bonneville a little money for a public address system.

Mr. **Steiwert**. Perhaps the same person that covered the Carter-Ford debates has——[Laughter.]

Senator **Hatfield**. Mr. Chairman has suggested that this is a very crass effort on the part of Bonneville to try to demonstrate their need for a power rate increase.

Chairman **Abourezk**. What I am thinking of, Dr. Donaldson, is this: That there is going to have to be a pretty complex process to be gone through in order to resolve this. I am brand new to this issue. We don't have these kind of problems in my State of South Dakota. We have different problems there.

As chairman of the Indian Affairs Subcommittee and of the American Indian Policy Review Commission, it is an issue that I am going to have to deal with as long as I am in these positions. It is a responsibility I have to undertake. I can't avoid it one way or the other.

I just want to throw out a couple of ideas to you, that whether or not I am familiar totally with this issue or familiar with issues of conflict in general, I think the same principles might apply.

It appears that we have two immovable factions to this particular conflict, and it was not brought about by either side.

It is not the fault of the Indian tribes, it is not the fault of the fishermen, and it is not the fault of the State of Oregon. Now, I would hope that everyone can recognize that. I would hope that everyone can try to look at the other person's viewpoint and try to understand that viewpoint even if they don't agree with it, and then from that basis, try to work toward a solution.

Now, I consider the responsibility to be that of the Federal Government.

In the last century it was the Federal Government who took the land away from the Indian, and it was the Federal Government's idea to write a treaty. It wasn't the Indian's idea. They were happy. They were out there making a living the best way they knew how, without disturbance on the part of the Federal Government. But it was the Government's idea, not theirs.

I don't know if there is anybody living today who at that time recommended that the Government write that kind of a treaty with the Indian people. So you certainly cannot lay it upon people in Oregon today. You cannot lay the blame on them, and you can't visit the sins of the fathers upon their sons and daughters. There is no way we can do that. I'm not sure that even the Bible would go that far.

Senator **HATFIELD**. Ask Jimmy Carter.

Chairman **ABOUREZK**. We will ask God. I will speak to Governor Carter when I get back to Washington.

But it really boils down to this. That there is no way to escape the responsibility on the part of the Federal Government for what they did 100 years ago. It is a continuing government. And what was promised by the Government in the last century, I think must be lived up to today.

But this promise by the Government 200 years ago to all of its citizens must be lived up to today. If not, then the Government will have no credibility and we don't really want that kind of government.

So what I am suggesting is this—this is just an idea which would be open to revision, attack, or response of any kind—that perhaps the State could take the lead in this. I would hope you might be able to do this, really set up a representative group of Indian tribes and a representative group of both sport and commercial fishermen and undertake negotiations with each side to determine how the fish resource is going to be both conserved and increased in fact.

And then when we come back from such a meeting with recommendations on how this thing can be resolved and tell the Federal Government how it then should fulfill its responsibility, whether with additional money, with encouragement for such an agreement or whatever, it would seem to me that you would work your way out of this. As I understand the controversy here, if it gets any worse, you are going to become like some of the reservations in South Dakota. You are going to start shooting at each other, if it has not already happened, and I don't think anybody really wants that. If you want it, you don't know much about shooting because it is not a very pleasant thing to go through. I have gone through it.

So I will just throw that out as a suggestion. I would like to hear comments from all the witnesses on that kind of an idea or any other kind of an idea.

Dr. **Donaldson.** I assume that was a statement, not a question.

Chairman **Abourezk.** It was a statement, and if you have any comments on it, please feel free to make them.

Dr. **Donaldson.** We are very responsive to the comment, as responsive as we can possibly be.

We recognize our job and we like to do it.

Chairman **Abourezk.** I am addressing this to the State witnesses here. I don't know that anybody else could accomplish that kind of a role or perform it. I don't think the Federal Government can perform that role. I guess we could. I think it would be more up to the State to do that as just an impartial mediator representing all of the citizens of the State.

Ms. **Hall.** Senator, I see no problem in the State doing that with its recognized Indian tribes. That is what we are talking about doing.

But I think that the Federal Government is going to have to somehow clarify the position of terminated tribes.

We don't know what their rights are. It has been decided piecemeal by court decisions, and Congress kind of left it open. You have had the opportunity to read the hearings on the various termination acts, and Congress thought it was politically a hot potato and decided not to discuss the hunting and fishing rights issue—and it has been left open. If it were clarified, then both the State and the Indian tribes would know where they stand.

Chairman **Abourezk.** I haven't read all of that 1954 legislation, but I don't believe—maybe you can correct me if I'm wrong in this—that the Government said the treaty rights were extinguished as a result of termination.

Ms. **Hall.** The Government very carefully left it open. I read the 1954 hearings on the Klamath Termination Act. I have not read them on tribes outside of Oregon.

But Senator Watkins talked about the possibility of buying them out. The author of the Klamath Termination Act, in Public Law 83–280, said that that was possible under the law as it was written and they could always buy it out.

Another gentleman, I think Senator Watkins, pointed out that they were kind of leaving it open—leaving a problem for the States to deal with.

Then the Commissioner of Indian Affairs, Mr. Lee, said, "Well, it is our intention to just sort of not touch the matter." And they kind of went on to other matters and just left it open.

Now we have a court decision on that particular group, but it doesn't solve the problem for this State or the other States with terminated tribes.

Chairman **Abourezk.** Do you think, as a result of that decision the court's made, the other terminated tribes still have their treaty rights intact?

Ms. **Hall**. The other treaties are different. The legislative history is different. Here again I speak only of the State of Oregon.

Chairman **Abourezk**. The determination isn't different, though.

Ms. **Hall**. The fact of termination is not different. The background is different, and there certainly is a precedent.

Chairman **Abourezk**. So it would follow logically, to me, that if the courts were to decide on every other termination case, that they would say the treaty rights were not extinguished. They have already set a precedent in one case, haven't they?

Ms. **Hall**. Yes; and that is where I think you have a problem. In the case of the recognized tribes which have reservations, they have a land base, and in the case of the terminated tribes, they have sold their lands. So you are talking about giving them rights on somebody else's land and it is not even always the Federal Government's land. In many cases, some of that land is privately owned.

Chairman **Abourezk**. Well, I think we are not here to decide the case today, but it would seem to me that whether or not the Indians have sold a great part of their land doesn't have much to do with it.

The fishing rights were given in return for land that was given to the Government and thereafter opened to U.S. settlers. So whether or not the Indians owned any lands has little to do with fishing rights.

Ms. **Hall**. I respectfully disagree. It sems to me, if I owned a piece of land, I have the right to fish on it under the State law, and if I sell that land, I don't have the right to go back and fish on it again.

I understand that where you have a treaty, you have a different court interpretation, but my point is that it just doesn't seem fair to the people who buy that land in good faith.

Maybe it is the law, but it doesn't seem to be fair to a person who goes out and buys his land, or to someone who sells his land. It doesn't seem fair to me to sell a piece of land and retain a right in it.

Chairman **Abourezk**. That happens with the U.S. Government all the time—to maintain the mineral rights on every piece of land they sell.

Ms. **Hall**. Sure, but they do it in the deed, but here we have the terminated Indians, and the matter was left open. Congress, I think, really just kind of passed the buck at the time.

Chairman **Abourezk**. Well, that is Congress responsibility, that is right.

Ms. **Hall**. They didn't clarify it. The Indians brought it up on many occasions: "What about our hunting and fishing rights? Do we have them or don't we?"

And nobody answered their question.

So now the court is answering it for us, and it is creating problems that didn't need to be created if Congress had taken care of it at that time.

Chairman **Abourezk**. Of course, there are many things in this whole issue that were not fair—a great many things were not fair—but aren't we also talking about the total question of off-reservation fishing rights in the first place? We are not talking about on-reservation rights, anyhow.

Ms. **Hall**. No; not at all.

Chairman **Abourezk**. So it is all off-reservation.

Ms. HALL. No, I think you misunderstood. We have two situations here in Oregon. The Columbia River Treaties say specifically that the tribes have the right to fish off the reservation in their usual and accustomed places in common with the other citizens.

Chairman ABOUREZK. Right.

Ms. HALL. No other treaties, in this State at least, say that. We are not talking about treaties which specifically provide for off-reservation fishing rights; we are talking about treaties such as the Klamath treaty which says the Indians have the exclusive right to fish on the reservation. But there is no longer a reservation. They sold the lands and were paid for it. Now the court says that they didn't sell their hunting and fishing rights, they weren't paid for those, so they still have them.

So our position is they were not paid for them, and the fair thing to do, since they no longer own the lands, is to pay them for it. It clears up the land title, for one thing.

It leaves a difficult situation. We are not talking about the off-reservation fishing rights specifically given in the Columbia River Treaty.

Senator HATFIELD. Is the question not also one as to the Klamath termination of 1954 that such hunting and fishing rights were retained by those who were enrolled at the time of the termination or those in perpetuity?

Ms. HALL. This has been decided now. Since we last discussed the Klamath Termination Act, we received Judge Solomon's decision. In fact, I have an extra copy here I would be happy to give you.

It says very clearly that the right applies to descendants of those members on the tribal roll.

Senator HATFIELD. So in perpetuity, that makes the problem even more complex. As I understand it, if you were dealing with those who were enrolled at the time of termination, you would have perhaps an easier way to try to negotiate some kind of a settlement.

But as I understand the court case, there is talk now about these rights being retained in perpetuity by the descendants of those, as well as those enrolled at the time.

Ms. HALL. That is correct.

Senator HATFIELD. Am I correct?

Ms. HALL. I will read you the paragraph:

> I, therefore, hold that the rights of the Klamath Indians who hunt, fish and trap free of State regulations extends to the descendants of persons on the 1957 final tribal roll.

Basically, the tribe determines its own membership, so it is whoever they say is a member of the tribe.

Senator HATFIELD. Those living today can negotiate away the rights of their potential descendants.

Ms. HALL. It could be done. You could have a class action that would bind everyone. You could structure an agreement that would be legally binding.

Senator HATFIELD. But it doesn't give a more complex problem than if we were dealing strictly with——

Chairman ABOUREZK. I wonder if we could have those decisions put in the record?

Ms. HALL. Surely.

[The decisions referred to follow:]

U. S. DISTRICT COURT
DISTRICT OF OREGON
FILED

SEP 16 1976

ROBERT M. CHRIST, Clerk
By DEPUTY

90-2-0-740
41

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

CHARLES E. KIMBALL, STEPHEN L. LANG, ALLAN LANG, LEONARD O. NORRIS, JR., and JAMES KIRK,

Plaintiffs,

vs.

JOHN D. CALLAHAN, et al.,

Defendants.

Civil No. 73-155

OPINION

Daniel H. Israel, Sally N. Willett
1506 Broadway
Boulder, Colorado 80302;

Michael L. Hanley
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Attorneys for Plaintiffs.

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Attorneys for Defendants.

SOLOMON, Judge:

Plaintiffs, five Klamath Indians, brought this action for a declaratory judgment and for an injunction against the director and members of the Oregon Game Commission, now known as the Oregon Fish and Wildlife Commission, and the director of the Oregon State Patrol. They sought to prevent the defendants from enforcing hunting and fishing regulations against the Indians on their ancestral Klamath Reservation.

In a memorandum opinion dated March 15, 1973, I granted the defendants' motion to dismiss for failure to state a claim upon which relief could be granted. I questioned whether this Court had civil rights jurisdiction under 42 U.S.C. § 1983 and whether each plaintiff could invoke federal question jurisdiction under 28 U.S.C. § 1331 by showing that the controversy as to him exceeded $10,000. The Court of Appeals reversed. 493 F.2d 564 (1974). It concluded that there was jurisdiction; and, relying on Menominee Tribe of Indians v. United States, 391 U.S. 404 (1968), held that the plaintiffs were entitled to a declaration that they retained their exclusive treaty rights to hunt, fish, and trap on their ancestral reservation.

Although the Court of Appeals found that this Court has jurisdiction and that the Indians' rights to hunt, fish, and trap on their ancestral reservation are exclusive, the defendants have again raised the issues of jurisdiction and the State's power to regulate. These issues were decided by the Court of Appeals. They are now the law of the case.

The defendants also contend that if the rights of the Indians to hunt, fish, and trap are exclusive, those rights must be limited to those Indians whose names appear on the final roll of the tribe, prepared in 1957.

If Congress intended the Klamath Termination Act to terminate all of the treaty rights of the Klamath Indians on the death of the last survivor whose name appeared on the final tribal roll, Congress could have so provided in clear and unambiguous language. Under Menominee Tribe of Indians v. United States, 391 U.S. at 413, "'the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress.'"

I therefore hold that the rights of the Klamath Indians to hunt, fish, and trap, free of State regulations, extend to the descendants of persons on the 1957 final tribal roll.

Plaintiffs do not seek to exercise their treaty rights on land sold to private owners who prohibit hunting, fishing, and trapping on that land. Neither do they seek to enforce exclusive rights on the remaining land, most of which is owned by the United States Government.

They are willing to permit State regulation under the following conditions:

> "1. The specific statute or regulation is required to prevent demonstrable harm to the actual conservation of the game or fish, i.e., it is essential to the perpetuation of a particular species of game or fish.
>
> "2. The measure is appropriate to its purpose.
>
> "3. Klamath Indian tribal regulation for enforcement is inadequate to prevent demonstrable harm to the actual conservation of the game and fish.
>
> "4. The conservation required cannot be achieved to the full extent necessary by restriction of hunting, fishing and trapping by non-treaty sportsmen."

These conditions appear to conform with the current principles of State regulation of off-reservation fishing rights set forth in United States v. Washington, 520 F.2d 676 (9th Cir. 1975), and Sohappy v. Smith, 302 F.Supp. 899 (D.Or. 1969).

Recently, the General Council of the Klamath Tribe approved comprehensive regulations for the hunting of game by Klamath Indians on the former Klamath Reservation. The plan provides for joint regulation with State agencies.

Apparently the plaintiffs want me to approve their proposal. Although their objectives appear to be commendable, I have no authority to judicially approve their proposals. Nevertheless, I hope that the Oregon Fish and Wildlife Commission will approve these proposals; or if the Commission is unable to approve all of them, that the Commission will meet with representatives of the Klamath Indians and promulgate mutually satisfactory regulations for the management of the fish and game resources on these lands.

Within 30 days, counsel shall prepare a joint statement on the remaining issues in this case with a time schedule for the filing of briefs and the presentation of evidence.

Dated this 10th day of September, 1976.

United States District Judge

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
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CLERK
U. S. COURT OF APPEALS

CHARLES E. KIMBALL, STEPHEN L. LANG, ALLAN LANG, LEONARD O. NORRIS, JR., and JAMES KIRK,

Plaintiffs-Appellants,

v.

JOHN D. CALLAHAN, ALLAN L. KELLY, PAT J. METKE, FRANK A. MOORE, and JAMES W. WHITTAKER, each individually, and as a member of the STATE GAME COMMISSION OF THE STATE OF OREGON; JOHN McKEAN, individually, and as DIRECTOR OF THE OREGON GAME COMMISSION; and HOLLY HOLCOMB individually, and as DIRECTOR OF THE OREGON STATE PATROL & OREGON GAME ENFORCEMENT DIVISION,

Defendants-Appellees.

No. 73-1512

OPINION

Appeal from the United States District Court
for the District of Oregon

Before: KOELSCH, WRIGHT and KILKENNY, Circuit Judges.

WRIGHT, Circuit Judge:

Plaintiffs-appellants are Klamath Indians by racial ancestry and claim rights under the Treaty of October 14, 1864, 16 Stat. 707, which established the Klamath and Modoc Reservation in Oregon. Pursuant to the Klamath Termination Act, 25 U.S.C. §§ 564-564x, plaintiffs or their ancestors elected to withdraw from the tribe and have their interest in tribal property converted into money and paid to them. 25 U.S.C. § 564d(2).[1/] In order to pay the withdrawing members of the tribe, part of the original tribal property was sold, the greater part being taken by the United States. It now forms a part of the Winema National Forest and the Klamath Forest National Wildlife Refuge.

Plaintiffs seek a declaratory judgment declaring their right to hunt, trap, and fish within their ancestral Klamath Indian Reservation free of Oregon fish and game regulations, pursuant to the Treaty of October 14, 1864, supra. They also seek an injunction restraining defendants, officers of the State of Oregon, from applying and enforcing Oregon fish and game regulations against them within the boundaries of the old reservation.

The district court denied relief and dismissed the complaint for failure to state a claim upon which relief could be granted. We reverse and grant plaintiffs the declaratory relief they seek.

## I

## JURISDICTION

At the outset, we note that the defendants challenge the jurisdiction of this court and the district court over the subject matter of this action. The district court had jurisdiction if the matter in controversy exceeded the sum or value of $10,000, exclusive of interest and costs, and arose under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331. We find jurisdiction. The matter in controversy is the right to be free from state regulations, and the value of this right is measured by the extent to which plaintiffs' treaty rights to hunt and fish would be impaired by state regulation. *Yoder v. Assiniboine and Sioux Tribes of Fort Peck Indian Reservation*, 339 F.2d 360, 363 (9th Cir. 1964).

More specifically, the amount in controversy is measured by determining the value to each plaintiff of the game and fish he would take if completely free of regulation, less the value of the limited amounts of game and fish he could take if regulated by the state.[2] Under similar circumstances this court has found jurisdiction under 28 U.S.C. § 1331, thereby implicitly finding a matter in controversy exceeding a value of $10,000. *Holcomb v. Confederated Tribes of the Umatilla Indian Reservation*, 382 F.2d 1013, 1014 n.4 (9th Cir. 1967); *see also Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001, 1002 (D. Minn. 1971). At any rate, we cannot say with "a legal certainty" that the value of the matter in controversy is really less than the jurisdictional amount. *City of Inglewood v. City of Los Angeles*, 451 F.2d 948, 953 (9th Cir. 1972).[3]

## II

## THE TREATY RIGHTS

The Treaty of October 14, 1864, 16 Stat. 707, described the boundaries of the Klamath and Modoc Reservation and stated that the described tract "shall, until otherwise directed by the President of the United States, be set apart as a residence for said Indians, [and] held and regarded as an Indian reservation. . . ." The treaty secured for the Indians "the exclusive right of taking fish in the streams and lakes included in said reservation . . . ." In 1956 the district court judicially interpreted this treaty also to provide the Indians with the exclusive right to hunt and trap on the reservation without state regulation or control. Klamath & Modoc Tribes v. Maison, 139 F. Supp. 634 (D. Ore. 1956).

Before deciding if these rights survive the Klamath Termination Act, we first consider whether the treaty was correctly interpreted to include hunting and trapping rights.[4/]

In Menominee Tribe v. United States, 391 U.S. 404 (1968), the Supreme Court considered the Treaty of Wolf River of 1854, 10 Stat. 1064, which granted the Menominee Indians a reservation in Wisconsin. The treaty made no mention of hunting and fishing rights, but provided that the reservation was to be held by the Indians "for a home, to be held as Indian lands are held." The Court agreed with the Court of Claims that this language includes the right to hunt and fish. 391 U.S. at 406;[5/] Menominee Tribe v. United States, 179 Ct. Cl. 496, 503-04, 388 F.2d 998, 1002 (1967); State v. Sanapaw, 21 Wis.2d 377, 383, 124 N.W.2d 41, 44 (1963).

We find that the language "set apart as a residence for said Indians, [and] held and regarded as an Indian reservation" also includes those rights. The specific treaty provision reserving the Klamaths' exclusive right to fish could prompt the argument that their treaty excludes the right to hunt. However, in light of the highly significant role that hunting and trapping played (and continue to play) in the lives of the Klamaths,[6/] it seems unlikely that they would have knowingly relinquished these rights at the time they entered into the treaty. See Menominee Tribe v. United States, 391 U.S. at 406; State v. Sanapaw, supra at 383, 124 N.W.2d at 44. Moreover, they enjoyed the exclusive rights to hunt, trap, and fish for almost 100 years with the consent and acquiescence of the State of Oregon. Klamath and Modoc Tribes v. Maison, 139 F. Supp. 634, 637 (D. Ore. 1956). These facts, coupled with our duty to construe the treaty favorably to the Indians with whom it was made,[7/] lead us to conclude that the treaty provides exclusive rights to hunt and trap, as well as to fish, free of state regulation.

## III

## EFFECT OF THE KLAMATH TERMINATION ACT

In 1954 Congress passed the Klamath Termination Act, which became fully effective in 1961. 25 U.S.C. §§ 564-564x. The express purpose of this Act was to terminate federal supervision over the Klamath Tribe of Indians, to dispose of federally owned property acquired for the administration of Indian affairs, and to terminate the provision of federal services to the Indians solely because of their status as Indians.

Pursuant to the Klamath Termination Act, a final roll of all adult members of the tribe was prepared and published in 1956. 25 U.S.C. § 564b. Under the Act, each person whose name appeared on this tribal roll had to elect whether to withdraw from the tribe and receive the money value of his interest in tribal property or to remain in the tribe and participate in a non-governmental tribal management plan. The Act provides that "[m]embers of the tribe who receive the money value of their interests in tribal property shall thereupon cease to be members of the tribe. . . ." 25 U.S.C. § 564e(c).

On the final tribal roll were 2,133 persons. Of these, 1,660 elected to withdraw from the tribe and take their interests in cash. The remaining 473 elected to retain their interests in land and to participate in the land management plan. A part of tribal land proportionate to the number of remaining members was transferred to a private trustee to administer under the statutory management plan. The remainder was sold to pay the withdrawn members, and the majority of this portion is now United States national forest land.

Plaintiffs are five Klamath Indians who withdrew from the tribe. They claim that they nevertheless retain treaty rights to hunt, trap, and fish free of state regulation on the former Indian land that was sold to pay them for their shares in tribal property. Feeling compelled by Menominee Tribe v. United States, 391 U.S. 404 (1968), we agree.

The Menominee Termination Act [25 U.S.C. §§ 891-902] is similar in several respects to the Klamath Termination Act. Both provide basically for the termination of federal supervision over the property and members of the respective tribes. The Wisconsin Supreme Court held in State v. Sanapaw, 21 Wis.2d 377, 124 N.W.2d 41 (1963), that the hunting and fishing rights of the Menominee Indians were abrogated by Congress in the Menominee Termination Act. The tribe then brought suit against the United States in the Court of Claims to recover damages for the loss of those rights. Menominee Tribe of Indians v. United States, 388 F.2d 998 (Ct. Cl. 1967). That court awarded no damages, concluding that the Termination Act did not abrogate the Indians' rights to hunt and fish. 388 F.2d at 1005-06.

The Supreme Court affirmed the Court of Claims. Menominee Tribe of Indians v. United States, 391 U.S. 404 (1968). The Court noted that the effect of the Termination Act was that all federal supervision over the tribe and tribal property was to end and that "the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction." 25 U.S.C. § 899. The Court acknowledged that this language supports a forceful argument that the Termination Act submitted the hunting and fishing rights of the Indians to state regulation and control. The Court, however, reached the opposite conclusion. 391 U.S. at 410.

Its conclusion was based in large part on Public Law 280 [18 U.S.C. § 1162], passed at the same time as the Menominee and Klamath Termination Acts and which became effective seven years before the Termination Acts became fully effective. That law granted certain states jurisdiction "over offenses committed by or against Indians in the areas of Indian country" named in the Act, which in the case of Wisconsin was described as "All Indian country within the State," and in the case of Oregon, as "All Indian country within the State except the Warm Springs Reservation." But Public Law 280 provided further that "Nothing in this section . . . shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute *with respect to hunting, trapping, or fishing* or the control, licensing, or regulation thereof." (Emphasis added.)

The Supreme Court noted that, at the time Public Law 280 became effective in 1954, the Menominee Reservation had not been terminated and it was still "Indian country" within the meaning of the law. Similarly, the Klamath and Modoc Reservation in Oregon was still "Indian country." The Court held that Public Law 280 preserved treaty hunting and fishing rights even after termination. The Court's reasoning compels our conclusion in the present case.

> Public Law 280 must therefore be considered *in pari materia* with the Termination Act. The two Acts read together mean to us that, although federal supervision of the tribe was to cease *and all tribal property was to be transferred to new hands*, the hunting and fishing rights granted or preserved by the Wolf River Treaty of 1854 survived the Termination Act of 1954.

391 U.S. at 411. [Emphasis added.]

The Court stated that this construction is in accord with the purpose of the Termination Act, which is only to terminate federal *supervision* over tribal property and members. Both the Menominee and the Klamath Termination Acts contain a provision rendering inapplicable "all statutes of the United States which affect Indians because of their status as Indians." 25 U.S.C. §§ 899 and 564q. The Court stated that this provision "plainly refers to the termination of federal supervision. The use of the word 'statutes' is potent evidence that no *treaty* was in mind." 391 U.S. at 412.

The Court emphasized that it would not "construe the Termination Act as a backhanded way of abrogating the hunting and fishing rights of these Indians." It stated that the intention to abrogate or modify a treaty is not to be lightly imputed to Congress, and it found it "difficult to believe that Congress, without explicit statement, would subject the United States to a claim for compensation by destroying property rights conferred by treaty . . . ." 391 U.S. at 412-13.

Defendants argue that *Menominee Tribe* is distinguishable because of significant differences between the Menominee and Klamath Termination Acts. True, unlike the Klamath Termination Act, the Menominee Act gave no option to the Menominee Indians to withdraw from the tribe and receive the money value of their interests in tribal property.[8] Also, although title to the reservation changed hands in *Menominee Tribe*, the Menominees continued to occupy the same land before and after the Termination Act. The disputed land in this case, on the other hand, is no longer legally occupied by the Klamaths.

While these are substantial points of distinction, we find nothing in the language of Menominee Tribe to indicate its reasoning does not transcend these distinctions.[9/]

Defendants also contend that the reasoning of an earlier decision of this court supports their position. In Klamath and Modoc Tribes v. Maison, 338 F.2d 620 (9th Cir. 1964), certain members of the Klamath tribe, none of whom had elected to convert his tribal interest into money, sought a declaration of their right to hunt and trap, free from Oregon regulation and control, in an area that had formed a part of their reservation prior to the Klamath Termination Act. This Court refused to grant such relief and held that, as a result of the Termination Act, no treaty rights attach to land severed from the former reservation. We acknowledged that the Termination Act does not expressly deal with any treaty rights respecting hunting and trapping. We held, however, that the treaty rights are limited to the lands of the reservation and that the Act, by effectively reducing the size of the reservation, "most certainly reduced the area to which those rights attach." 338 F.2d at 623.

This reasoning cannot stand in light of Menominee Tribe. It is inconsistent with the Supreme Court's requirement that Congress clearly indicate when it intends to abrogate treaty rights. Moreover, it is inconsistent with the Court's construction of Public Law 280 that treaty rights with respect to hunting, trapping or fishing survive the Termination Acts to the extent that they attach to land known as "Indian country" at the time Public Law 280 became effective.

Congress not only failed to indicate clearly an intent to abrogate treaty rights; it in fact expressly preserved at least fishing rights on the former reservation. The Termination Act provides that "[n]othing [in the Act] shall abrogate any fishing rights or privileges of the tribe or the members thereof enjoyed under Federal treaty." 25 U.S.C. § 564m(b). This court in Klamath and Modoc Tribes v. Maison, 338 F.2d 620 (9th Cir. 1964), stated that if this provision does provide fishing rights on the entire former reservation, a question not before us at the time, it did so by an express statutory grant since the treaty rights themselves could only extend to the now shrunken reservation. Defendants in this case offer a different interpretation and suggest that § 564m(b) does not aid plaintiffs since it applies to "the tribe or the members thereof" and plaintiffs are no longer "members" of the tribe.

Neither of these constructions withstands analysis. Since the Act provides that nothing in it shall abrogate any treaty fishing rights, we conclude that a Klamath Indian possessing such rights on the former reservation at the time of its enactment retains them even though he relinquishes his tribal membership or the reservation shrinks pursuant to the Act. Otherwise, the Act would in fact have resulted in the abrogation of treaty rights.

One final consideration this court must make concerns the extent of plaintiffs' rights that we here hold survive the Termination Act. Plaintiffs seek no rights against private landowners, acknowledging that those persons might properly exclude Klamaths and anyone else from hunting and fishing if they so desire.[10/] Plaintiffs do, however, seek a declaration, and we so hold, that they may exercise their treaty hunting, trapping, and fishing rights free of state fish and game regulations on the lands constituting their ancestral Klamath Indian Reservation, including that land now constituting United States national forest land and that privately owned land on which hunting, trapping, or fishing is permitted.[11/]

Accordingly the judgment of the district court is REVERSED.

## FOOTNOTES

1/ For a description of the termination process, *see* Klamath and Modoc Tribes v. United States, 436 F.2d 1008 (Ct. Cl.), *cert. denied*, 404 U.S. 950 (1971).

2/ We do not decide whether the damages to the individual plaintiffs can be aggregated to reach the sum of $10,000.

3/ Given jurisdiction under 28 U.S.C. § 1331, the district court had the power, under 28 U.S.C. § 2201, to render the declaratory relief sought by plaintiffs. This court has jurisdiction under 28 U.S.C. § 1291.

4/ Defendants state that an earlier decision of this court overruled the district court's interpretation of the treaty to include hunting and trapping rights. This is incorrect. In Klamath and Modoc Tribes v. Maison, 338 F.2d 620 (9th Cir. 1964), we held, incorrectly in light of Menominee Tribe v. United States, 391 U.S. 404 (1968), that whatever treaty rights the Indians had on land transferred as a result of the Klamath Termination Act were lost. We did not find that the treaty failed to provide hunting and trapping rights. We held that if § 564m(b) of the Act provides fishing rights on the severed land, a question not before us at the time, the rights would be grounded in an express statutory grant rather than in the treaty. Section 564m(b) is discussed in part III of this opinion, *infra*.

5/ The Court noted that this language sums up in one phrase "the familiar provisions of earlier treaties which recognized hunting and fishing as normal incidents of Indian life." 391 U.S. at 406 n.2.

6/ *Klamath & Modoc Tribes v. Maison*, 139 F. Supp. 634 (D. Ore. 1956).

7/ The Supreme Court in Menominee Tribe reiterated its earlier statement in United States v. Winans, 198 U.S. 371, 380-81 (1905), that

> "[W]e will construe a treaty with the Indians as 'that unlettered people' understood it, and 'as justice and reason demand, in all cases where power is exerted by the strong over those to whom they owe care and protection,' and counterpoise the inequality 'by the superior justice which looks only to the substance of the right without regard to technical rules.'".

391 U.S. at 406 n.2; McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 174 (1973).

8/ The Menominee Termination Act did, however, provide for the payment of $1,500 to each member of the tribe on the final tribal roll. 25 U.S.C. § 894.

9/ Indeed, the reasoning of Menominee Tribe may be even more compelling in this case. At the hearings on the Klamath Termination bill, Senator Watkins suggested that the Government "buy out" the Indians' hunting and fishing rights rather than preserve them after termination. See Joint Hearings, Subcommittees of the Committees on Interior and Insular Affairs, 83d Cong., 2d Sess., Pt. 4, on S. 2745 and H.R. 7320, pp. 254-55. Congress did not heed this suggestion, however.

The Klamath Termination Act provides that withdrawn members of the tribe relinquish their interests in tribal property. 25 U.S.C. § 564e(c). Treaty rights to hunt and fish are, however, rights of the individual Indians. McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 181 (1973); Mason v. Sams, 5 F.2d 255, 258 (W.D. Wash. 1925).

10/ We make no holding and intimate no opinion on the treaty rights of the Indians vis-a-vis the private Oregon landowners.

11/ Plaintiffs do not seek exclusive rights to hunt, trap, and fish on land transferred pursuant to the Termination Act.

**Senator Hatfield.** What is the position of the State on the basic policy of termination?

**Ms. Hall.** Could you clarify your question a little bit? Do you mean: Do we think that they should have been terminated?

**Senator Hatfield.** I am talking about the generic, basic concept of termination. Is there a position that the State has on that issue relating to Indian tribes?

**Ms. Hall.** I don't think we have a position on termination as such. We simply have taken it as a fact and tried to deal with it from there.

**Dr. Donaldson.** We have stated our position relative to any fishing termination, but termination per se, Senator, I don't know that that is our position.

**Senator Hatfield.** The position the State took at the time is still the position of the State in the absence of any action to the contrary. The State had a position at the time of termination.

**Ms. Hall.** In 1954, that is correct, they supported termination at the time of termination.

**Senator Hatfield.** So do I understand then the State's position has been changed or does the State's position stand as of 1954?

**Ms. Hall.** The State hasn't considered it.

**Dr. Donaldson.** I would assume by lack of action that the State position remains the same, Senator. I would imagine this case has not been considered or discussed.

**Senator Hatfield.** Have the claims of the Coos, the Lower Umpqua, and Suislaw tribes as to fishing rights been the basis of any court action or any court decision actually granting such rights?

**Ms. Hall.** Not yet.

**Senator Hatfield.** Mr. Chairman, we are fortunate in the State of Oregon to have a man of the quality, character, and experience of Dr. Donaldson. He is probably the top man in the Nation as far as any of the directors are concerned. I know his very extraordinary background and I welcome him in this, I think, one of his first public appearances before a congressional committee.

I would like to just talk a little bit, Dr. Donaldson, about this matter of upgrading the Federal program as far as the possibility of increasing the base of the resource.

I would welcome material that you might have for the record, if you do not have it with you today. As you know, the direction of the Federal Government has been more in the idea of rearing ponds rather than hatcheries, because I suppose, among other reasons, they are less expensive.

On the Appropriations Committee, I have sought and acquired $500,000 to $600,000 over the administration's budget for such programs for the National Oceanographic and Atmospheric Administration last year.

What, in your opinion, is the extent that we can develop a new Federal-State program to just work on this matter of expanding the base of the resource? Do you find cooperation with the Federal agencies at this time in the development of this kind of effort?

**Dr. Donaldson.** First of all, Senator, thank you for your kind words. I sincerely hope that I may live up to them. I will make every effort to do that.

**Senator Hatfield.** I have every expectation.

Dr. **Donaldson**. You are now getting into an area I feel more competent in than Indian law.

Senator **Hatfield**. I wanted to explore your expertise this morning.

Dr. **Donaldson**. Thank you. Yes; it has been a gratifying first 2 months, but I have accepted this challenge. I knew it would be there, but not quite in the intensity as it began. But this is the nature of the job and we will fulfill it.

As to the role of State, Federal, and may I please include the other folks into this, the user groups—we are talking about the Indians, the gill netters, the sportsmen, and the trollers, wherever people are utilizing this resource—will have a piece of this, obviously, and in enjoying it and using it for their fulfillment of goods and services, that they combine programs. And that is in the order of Judge Belloni, a coordinated plan that he has been asking for.

So long as we know what the guidelines are that we have to respond to with the resolving of the case on the Columbia River, hopefully, soon, we then must get about our business of enhancing these runs. I use enhancement from this particular point now and recognize the terminology here of mitigation and enhancement. Whatever the words are, it is all the same thing. We need more fish. There is no question about that. Our environment has changed and our users have increased.

That is why we have a conflict over fish and that is why we are here. I am speaking of fishing rights and wildlife as an issue. That tags along, really, in this case.

But the fish are the important item because there is where the Congress is.

I certainly hope and plead with all parties here that we do resolve it on the Columbia River and that we do resolve it on the other issues that we are speaking to today so that we can get about this business of coordinated planning.

I see real encouraging signs in talking with my associates and professional friends in the Federal Government, Fish and Wildlife Service, Natural Fishery Service, they are willing to work together in this particular cause.

Let's for a moment envision a system whereby we come to a fair, equitable solution of the allocation of fish in the Columbia River for an example.

All parties then join together in lock step, proceed to Congress to say, "Here is what our issues are, here is what our needs are, here is how these can be fulfilled, and here is the return."

The studies have been done to show the benefit of the cost ratios on these things and they are in favor of expending of Federal funds in this case to enhance these runs. We can do the job.

Technically, we have the know-how, some place we are a little short. We will need funds for research, and the Columbia River passage problem is a severe one.

I am confident that the things I know of and have heard that we can do this.

There are going to be some changes, there are going to be some different things done. I think we are going to look at a restructuring of the resource.

There are areas where actual runs should be protected.

There are areas where we must go totally artificial. The problems exist often where we have lost runs because of changes in the environment brought about by man's activities.

It only can come about through coordinated efforts by getting all the people involved. We want to involve the other user groups at the bottom level where the planning is done. To bring them in with the recommendations that this is how it is going to be, and then get into the confrontations we face in our recent compact and commission hearings where we have extremely emotional deliberations. Wise judgment does not prevail under those conditions.

So, by total involvment, by planned, coordinated efforts with the Federal Government and with the funds coming that are necessary—and I'm extremely concerned about the status of the Lower Snake River mitigation funds, and Aumsville, which I am told by your office are in great jeopardy, not because of them, but because of other things.

We have promised the people in Oregon for a long time that we are looking hopefully to those funds to begin to solve the extremely critical problem of the spring and summer chinook in the Columbia River runs that are threatened with extinction, valuable runs of fish.

We feel we can save these, but it is going to take some money and this cannot come out of State pockets.

Senator HATFIELD. These problems that you outlined, Dr. Donaldson, have been occurring long before this Indian fishing problem arose in the public.

Dr. DONALDSON. That is right.

Senator HATFIELD. So we cannot blame that on the Indian fishing problem, which has tended to be some of the public reaction.

Mr. Chairman, this gentleman is one of the unique people in this profession who has added more light than emotion. The tendency has been to add emotion to this whole problem.

I want to commend you for being unique in your profession, because I have felt that your whole commitment has been to try to enlighten rather than play one group against another.

I wanted to work with you, and I wanted to say I think we ought to pursue this matter of expanding the base, not waiting for this other issue to be resolved, because this problem of expanding the base has existed prior to the Indian fishing problem and it continues.

I find that it is my position on the Appropriations Committee, where I have been trying to add moneys to the budget and have succeeded to a degree, that I need the kind of support and logical expertise, that you represent, to continue to work with you in expanding this resource base.

Dr. DONALDSON. We can justify the expenditure of these funds, Senator; there is no question about that. I think we can more than justify the need.

We can all go again, as I say, to a coordinated group, as I can, in this case, the Columbia River, the other issues in the same form that can be applied elsewhere. But I am speaking now of the case that is rightly—and I again don't want to get involved in a legal discussion of this because—well, we have explained the reasons why not.

But I use that as an example to answer your question of how technically we can approach the problem.

Senator **Hatfield**. The Governor used good judgment in making this appointment and I commend him for it.

Dr. **Donaldson**. Thank you. You are very embarrassing in your comments, but I thank you.

Chairman **Abourezk**. It is hard to stay humble, Jack, when he——

Dr. **Donaldson**. It puts you in quite a spot, I will tell you that.

Mr. **Steiwert**. Senator, I would like to correct you. I think the Commission will take the credit for the appointment.

Senator **Hatfield**. I think, Mr. Chairman, that the Commission chairman is correct.

I would have given him full credit, but we have been such long time friends and both Republicans, I thought we could give a little bipartisan credit to the Governor.

Chairman **Abourezk**. We have no more questions. I am going to thank you all.

We have spent a little additional time on this panel of witnesses because the role of the State is extremely important in this. It is longer than we had intended to spend, but nevertheless, I think it has been a valuable period of time spent.

Dr. **Donaldson**. We recognize that, Senators Abourezk and Hatfield, and we thank you very much for making the trip to Oregon to come to listen to us.

Now I want to leave some time for the others to speak. Thank you very much.

Mr. **Steiwert**. Thank you, Senator Abourezk.

Chairman **Abourezk**. Thank you.

The next panel of witnesses will be sports fishermen representing sports fishing organizations.

If you would all come forward and sit up at the witness table.
Chuck Voss. Is Chuck here?

Mr. Voss. Yes, sir.

Chairman **Abourezk**. Executive director of the Northwest Steelheaders Council.

Henry Pavelek, president, Northwest Steelheaders Council.

Frank Amato, editor, Salmon Trout Steelhead magazine.

Forrest Meuret, vice president, Save Oregon Resources.

Am I right, are these sport fishing organizations now, all of them?

And John Bay, of the Bay News Co.

**Spectator**. Mr. Chairman, the president of the steering committee is here, too. I am actually speaking only for myself this morning.

Chairman Abourezk. All right. Then what is his name?

**Spectator**. Ranny Rancourt. I believe you have that name misspelled as Coscort.

Chairman **Abourezk**. I don't have it misspelled because I don't have it on the list. But you are welcome to come up.

**Spectator**. I have the letter from your committee from Washington to verify the fact that I did call Washington, D.C.

Chairman **Abourezk**. OK. You are welcome to testify. It doesn't matter. I didn't have it on my list is all.

Now, I didn't announce this at the outset of the hearing, but I have to leave here at noon, I have to catch a plane back to Washington.

So we have a number of witnesses.

As I did announce, I took longer with the State than I had intended to, so the first thing I would like to say to the remaining witnesses is, that if you have prepared statements, we will include all of those statements in the record as though you had given them in full.

But I would like to ask you as a favor: Please summarize what you have to say or just give me the key points of what you have to say.

There will be some questions that we will want to direct to you, but I would hope you would not read lengthy statements which could be read just as well if you handed them in.

What we would like to do is find out how you feel about this issue rather than all of the details that might be contained in the statement.

So I don't know how to arrange who should go first.

Perhaps I will just ask Chuck Voss, just how it is listed here.

Chuck, would you start out then? Without derogation of the other witnesses, I will just ask you to go first.

## STATEMENT OF CHUCK VOSS, EXECUTIVE VICE PRESIDENT, NORTHWEST STEELHEADERS COUNCIL

Mr. Voss. Fine. I will just make one point, if I may, Senator, and I certainly won't read this prepared statement. I do have five copies, as suggested.

The point I would like to make is that in South Dakota you don't have what we have, trout, and certainly, you don't have any salmon either.

But I would like to point out that here in the Northwest and Oregon and Washington, and all the controversy we have had with the Indians—we have had several meetings with the tribes of western Washington and the tribes here, but never once was there ever a threat, that I am aware of, and I represent 6,000 sportsmen up here.

Ours is not a matter of confrontation physically; it is a matter of talking and trying to work out a solution for a fishery. And the ones that I would like to speak to directly is the steelhead trout.

I would like to point out that the salmon is incubated, it is bred, handfed, designed for one reason: as food fishing. And these States, it is a law it is a food fish. It is not a game fish. We have to think of it in terms of pigs and cows. It is food fishing.

Chairman **Abourezk**. That I can understand.

Mr. Voss. I hope you understand this, too, Senator: Steelhead trout is a game fish. It is like an elk. It is like a deer. It cannot be harvested for commercial use. If it does, it will be destroyed.

Now, in the State of Washington, two rivers have been destroyed by the *Boldt* decision. I am talking about steelhead only, and that is what we are concerned with.

Chairman **Abourezk**. How has that been done now?

Mr. Voss. With a 50–50 operation, of course, on the Skagit River and Green River. The Skagit River probably is the best steelhead river in the State of Washington.

Tribes went in and netted those rivers and they got up to 80 percent of the fish. It just so happens that it is problematic fishwise once the nets go in the water—there is no sport fishing. The nets go into the water—into a river that you could be familiar with, say that is 80 feet across, and once the nets go in, and the steelheads that are not caught by the net are so spooked it is impossible to catch them. So there they go to their spawning grounds, and the catch by the sportsman drops to really nothing. And, of course, the Indian harvest show is great. So consequently, the Skagit River, all the goods that are there, the sportsman no longer go into that No. 1 river.

That applies also to the green River. That was the decision of Judge Boldt—50-50.

Now, the thing we are concerned about is that in the other court cases in Washington, it was testified over and over and over again that we cannot put nets in these small rivers on steelhead trout—these game fish. Steelhead trout is not a salmon, regardless of what you may hear from this audience.

I would call upon the Director of Fish and Wildlife to point out that it is not a salmon, it is a steelhead. A trout is a trout. It is a game fish. It does not come back in hoards like the salmon.

If you take the oportunity you can go to Eagle Creek or one of the hatcheries right now and see the salmon rolling in by the thousands now, but you don't see steelhead doing that. It is a game fish.

It is a law in the States of California, Oregon, Washington, and Idaho, that it is a game fish.

We carry punch cards as sportsmen. We can only catch so many a year, and we don't think there should be any commercial harvest by the Indians.

That is all I have to say.

**Chairman Abourezk.** Are the Indian tribes using the steelhead as a commercial harvest?

**Mr. Voss.** Well, as far as I know, we know that in Washington they are, because we saw them go out on the planes at United Airlines, out of Sea-Tac, in boxes of ice, being sold to the East. They were called summer salmon, but they were steelhead. That is highly disturbing.

That is my testimony, sir.

**Chairman Abourezk.** Thank you very much.

[The prepared statement of Chuck Voss follows:]

### Prepared Statement of Chuck Voss, Executive Vice President Northwest Steelheaders Council

Gentlemen: I very much appreciate this opportunity to discuss with you this morning the foremost subject on the minds of every sport fisherman here in the Western States.

I would first like to make it very clear that the 22,000 members of Trout Unlimited are very much concerned for the welfare and future needs of the Indian people.

Most of us understand the need for special treatment for the American Indian who has not advanced into the second half of the 20th century because of the restraint imposed upon them by the Federal Government.

However, the century-long problem of the governmental stewardship over the Red Man should be placed in its proper and exacting perspective. And that is to see the Federal bureaucracy for what it really is: A giant-sized mass of homosapiens following each other's tails when not attached by their own; not affording time to help the Indians build their character and imaginations, but rather, living off the residue of jobs and pensions afforded to those bureaucratic dragoons who live out their existence viciously displaying their Big Brother, Roman Legion lifestyles, all at the cost of a few remaining bands of tribes of the conquered North American Aborigines.

So it would not be exactly accurate to blame the Indian or the sportsmen for the confrontation they currently face regarding prior fishing rights. However, it is there, and both the Indians and the sportsmen will work out a solution to this question if we can keep those with law degrees from standing between us.

On January 26, of this year we received the decision of the Court of Appeals refusing to review the case of *United States* v. *Washington*.

This meant that the Judge Boldt decision remains the law of western Washington.

Even though Trout Unlimited spent several thousands of dollars in most of the recent Indian fishing rights litigation, it must be noted that the immediate concern of the Northwest Steelheaders in the controvery has been twofold: First, the steelhead trout is a game fish according to the laws of every state here on the West Coast, and should be recognized by the Federal Government as a game species.

In addition, it should not be exploited for commercial purposes by anyone, including the Indians.

Second, we believe very strongly that the States should have the rights to protect, and hence, regulate its own natural resources and all the people who use these resources.

I would like to add that we asked the U.S. Supreme Court to review Judge Boldt's decision because we felt that management of the resource by a Federal judge, or multiple management by a number of treaty Indian user groups, was a violation of the principles of independent, unified, expert management of the resource.

We also argued that Judge Boldt's definition of conservation, as limited to only adequate escapement, did not consider such factors as waste, preservation of wild and native stocks, or the maintenance of an orderly fishery for all user groups.

We also argued that the allocation formula was unfair, particularly to steelhead fishermen who typically fish upriver behind Indian gilinets.

The refusal of the U.S. Supreme Court to review this case means that these contentions cannot be presented to that court. However, they are still valid concerns of sports fishermen which must be argued in the courtrooms wherever possible.

I do recognize, gentlemen, that as I sit here before you this morning, this testimony is being directed at a Federal commission, which means that you are under the strong arm dictates of one Federal judge who we believe went far beyond his judicial powers by slicing Washington's fishery resources down the middle like a Solomon dividing his wealth 50–50 between two sons.

That decision was tragic, inordinately degrading to the professional fisheries people of the State of Washington, and totally disregards the equal protection guarantees of the Constitution of the United States.

However, I would like each of you to understand the singular most important point of this entire "fishing rights" controversy.

When you gentlemen think of salmon, think of cows and pigs, because salmon are food fish.

They are bred, incubated, handfed animals designed primarily for the specific use of being harvested for food. Food for Indians, Germans, Swedes and every other nationality known to man.

These are Pacific Salmon who return to the streams and rivers of the Pacific Coast to spawn and then die.

Now, let's look at the steelhead trout. Contrary to what some folks call them, they are not, and I repeat, they are not, salmon; they are rainbow trout that migrate to sea and return much like salmon, but with two special differences. First, they do not return to the river in giant numbers like salmon. There are very few steelhead trout returning to the streams in comparison to Coho or Chinook Salmon.

And second, steelhead trout do not die after spawning. Unlike the Pacific Salmon, the steelhead trout digs her nest, lays her eggs, the male fertilizes them, and they both move down river to once again journey into the great ocean pasturelands.

The steelhead trout, like a bull elk or a yearling fawn, is a game animal and cannot survive if subjected to commercial exploitation.

These game species must be carefully regulated and harvested for personal use only after professional biological management teams give their approval.

It is one of the great tragedies of this decade that one Federal Judge singlehandedly set into motion an act of genocide that is slowly destroying one of Washington's greatest resources: Its large, native steelhead.

In just two more seasons, the "super native" runs will be talked about in terms of the California Condors, the bald eagle, and the passenger pigeons.

This is our concern, gentlemen, the great wild stocks of steelhead trout and the future of these great game fish.

We are not fighting over the rights of Indians. We are not in court to keep the Indian people from enjoying a million dollar harvest of salmon on the Columbia River.

We are here today, and will be in court tomorrow and the next day, if necessary, to keep you, the Federal Government, from turning over the fishery resources of the states of Oregon, Washington, and California to the control of the Federal Government.

The more than 75 chapters of Trout Unlimited here on the Pacific Coast strongly object to the Federal interference in the fisheries management of these western states.

And I can assure you, gentlemen, that we will with every legal resource available to us, carry on our fight to protect the great steelhead trout from being indiscriminately destroyed by the Federal Government by allowing Indian fishermen to commercially gillnet, can, and sell this great game fish, steelhead trout.

## STATEMENT OF HENRY PAVELEK, PRESIDENT, NORTHWEST STEELHEADERS COUNCIL

Mr. PAVELEK. Mr. Chairman, members of the Commission, I am Henry Pavelek of Albany, Oreg. I am president of the Northwest Steelheaders Council of Trout Unlimited and I am speaking on behalf of that organization.

Chairman ABOUREZK. Is that the same organization?

Mr. PAVELEK. Yes.

Mr. VOSS. Excuse me, Henry.

I am the staff man for the entire West Coast, Senator. This is the president of the State of Oregon Council.

Mr. PAVELEK. I am speaking on behalf of that organization. I am also speaking on behalf of the Santiam Fish and Game Association. They could not have a member here today.

I will read sections of my testimony. I do have the prepared testimony in five copies that were requested.

I will read portions of it because I think I can do it in a much briefer manner.

First, we wish to express our sincere gratitude to the Commission for taking time out from your busy schedule to hold this very important hearing here in Oregon.

We are particularly grateful to our own Senator, Mark Hatfield, for the part he played in making arrangements for this hearing.

We are pleased that it is being held on our national hunting and fishing day. It is a most fitting and proper occasion for it, but it is also affecting our attendance here.

In answer to the question that you raised earlier, Senator, our position is dedicated to the improvement and enhancement of all fish and wildlife resources. This is what we work on constantly—ways and means of improving the fishery resource.

Most of us have considerable empathy for the American Indian and his social and economic problems and have consistently supported those programs that would improve his lot.

Now, however, we have become alarmed by recent court decisions that have interpreted ancient and obsolete treaties, which is, in light of modern society, in a manner that provided superior hunting and fishing privileges to certain American Indians.

These superior privileges are having a serious adverse effect upon the rights and privileges of other users of the resource.

They must be resolved through renegotiations, or in any other appropriate manner, so that all citizens, Indian and non-Indian alike, can enjoy the same hunting and fishing privileges and be subject to exactly the same hunting and fishing laws and regulations.

We have seen some unrealistic and highly inflated values given to these Indian hunting and fishing privileges. It has been suggested they be bought out.

Please remember, however, that we would not be buying out all of their hunting and fishing privileges, only those superior privileges that are above and beyond those enjoyed by other citizens.

Indians could still fish commercially, and noncommercially in exactly the same manner and under the same laws as the rest of us.

It is important to note that conditions have changed considerably since these treaties were entered into.

Neither the Indians, nor the non-Indians, had the vision or the foresight to foresee the drastic changes that would occur in our society or in our environment. We would like to go back to what it was before, but we realize this is an impossibility, too. Because of this, they are obsolete and should be recognized as such.

We cannot reestablish America as it has been. The hunting and fishing issues must be handled in light of today, not of yesterday.

The acceptance of full citizenship status by all Indians in 1926 would, in itself, indicate that all Indians are subject to the same Federal, State, and local laws as are all citizens. This apparently has not been adequately recognized by the courts. We want to see this become a reality.

These superior hunting and fishing rights cases have gone to courts because Congress has failed to act in interpreting these treaties, in modernizing them, and in resolving conflicts.

These cases have been very costly to everyone. We can better spend the money elsewhere where it will really benefit people, particularly the Indian people.

Federal intervention in traditional stated jurisdictions of managing our fish and wildlife resources has become a creeping and insidious monster that has left everyone confused and bewildered.

It is not realistic to have fragmented management decisions, many of which are conflicting and damaging to the resources, to be made individually by a multitude of Indian tribes and agencies as we are seeing take place today.

We want our State Fish and Wildlife Department to maintain the full responsibility for managing our fish and wildlife resources for all of its citizens.

Recent court decisions on these special Indian hunting and fishing privileges are becoming very unpopular with the general public because of their unfairness. They are creating hardships and harassment to other resource users. We are vitally concerned about the impact of present and future court decisions upon the future of our fish and wildlife resources.

Rightly or wrongly, Indians are being blamed for the mess created by the courts. They are increasingly being pictured as being very greedy and as wanting the better of two worlds, or two civilizations. As a result, their former highly respected image has suffered. It appears that the Indian tribes would want to resolve these injustices for their own self-respect and reputations.

Indians have often stated their special hunting and fishing privileges as rights, but in actuality, they are only claims. Non-Indians have their rights, too.

Neither we, nor the Indians should be responsible for any acts of former generations. It is not fair to have the bite put on non-Indian individuals and the States by the Federal Government for problems the Federal Government created for us. We are having to defend ourselves against the Federal Government. This is wrong and unjust.

It must be recognized that hunting and fishing is sacred to most of us, not just to Indians. Many of us are not too far removed from having to hunt and fish for a subsistence. This is the reason why this superior hunting and fishing privilege granted to the Indians by the courts has become such a hot and emotional issue among non-Indians. It is sacred to us.

Mr. Paul F. Blair, a Seattle attorney and a long-time defendant of Indian causes, states his hypothesis in an article entitled, "The Indian: One Big Exception," which appeared in the Seattle Post Intelligencer on Monday, August 30, 1976. His hypothesis is "That until the American Indian enjoys the same legal rights in his person and his property as all other Americans, he is doomed to ethnic failure."

We concur with this and believe the time is long past overdue to have no distinction between an Indian and a non-Indian.

Mr. Blair further states that the Judge Boldt decision on Indian fishery is not sound fishery policy and not sound national policy. We concur with this.

In the interest of justice and fair play, we are asking the cooperation of this Commission, and of our Indian contemporaries, in resolving this entire hunting and fishing issue for once and for all. This will permit Indians and non-Indians to enjoy exactly the same privileges and be subject to the same laws, rules, and regulations.

We believe this is a reasonable exchange for all Federal, State, and local program benefits provided to Indians in the past, present, and the future, which could be expressed in billions of dollars. We ask that all American Indians also show good faith to our non-Indian society.

Again, in closing, let me urge you to resolve this hunting and fishing issue as rapidly as possible.

We thank you for permitting us to testify.

Chairman ABOUREZK. Thank you very much. That is good testimony. I appreciate it very much.

Your prepared statement will be made part of the record.

[The prepared statement of Mr. Pavelek follows:]

## PREPARED STATEMENT OF HENRY PAVELEK, PRESIDENT, NORTHWEST STEELHEADERS COUNCIL OF TROUT UNLIMITED

Mr. Chairman, members of the commission, I am Henry Pavelek of Albany, Oreg. I am president of the Northwest Steelheaders Council of Trout Unlimited and I am speaking on behalf of that organization. I am also speaking for the Santiam Fish and Game Association.

First, we wish to express our sincere gratitude to the Commission for taking time out from your busy schedule to hold this very important hearing, here, in Oregon. We are particularly grateful to our own Senator Mark Hatfield for the part he played in making arrangements for this hearing. We are pleased that it is being held on our National Hunting and Fishing Day. It is a most fitting and proper occasion for it, but it is also affecting our attendance here.

Most of us have had considerable empathy for the American Indian and his social and economic problems and have consistently supported those programs that would improve his lot. Now, however, we have become alarmed by recent court decisions that have interpreted ancient and obsolete treaties (in light of our modern society) in a manner that provided superior hunting and fishing privileges to certain American Indians.

These superior privileges are having a serious adverse effect upon the rights and privileges of others and upon the resource. They must be resolved through renegotiations, or in any other appropriate manner so that all citizens, Indian and non-Indian alike, can enjoy exactly the same hunting and fishing privileges and be subject to exactly the same hunting and fishing laws and regulations.

We have seen unrealistic and highly inflated values given to these hunting and fishing privileges, when it has been suggested they be bought out. Please remember, that we would not be buying out all of their hunting and fishing privileges, only those superior privileges that are above and beyond those enjoyed by other citizens. Indians could still fish commercially, and non-commercially, in exactly the same manner and under the same laws as the rest of us.

There are also cases where we thought that these special privileges had been purchased, but later determined by courts as not having done so through some technicality. An example of this is where some twenty-seven million dollars had been paid to the Columbia River Indian Tribes for their superior privileges. There are other cases, also. It must also be recognized that only a very few Indian commercial fishermen benefit substantially from these special privileges, but all the Indians involved in renegotiated treaties would benefit where there is a payment for buying out any existing special privileges.

It is important to note that conditions have changed considerably since these treaties were entered into. Neither the Indians, nor the non-Indians, had the vision or the foresight to foresee the drastic changes that would occur in our society or in our environment. Because of this, they are obsolete and should be recognized as such. We cannot reestablish America as it had been. The hunting and fishing issue must be handled in light of today, not yesterday. In addition, the provisions for a "subsistence" fishery or a "subsistence" hunting is obsolete. There is no good viable reason in today's modern society for the existence of a "subsistence" fishery. Today, there are many economic assistance programs that preclude the need for it. Also, while we recognize that certain tribes may have used salmon in their ceremonies, we fail to see the need for a special "ceremonial" fishery preceding ceremonial events with today's modern methods of preserving fish for these and other events. The existence of a "subsistence" and a "ceremonial" fishery make it very difficult to enforce fish laws and regulations, as well as to properly manage a fishery.

The acceptance of full citizenship status by all Indians in 1926 would, in itself, indicate that all Indians are subject to the same Federal, State, and local laws as are all citizens. This apparently, has not been adequately recognized by the courts. We want to see this become a reality.

There were two parties involved in these Indian treaties: (1) The Indian tribes and (2) the U.S. Congress acting on behalf of its non-Indians. We are asking that Congress adequately represent the non-Indians in resolving this critical hunting and fishing issue.

These superior hunting and fishing cases have gone to the courts because Congress has failed to act in interpreting these treaties, in modernizing them and in resolving conflicts. These cases have been very costly to everyone. We can better spend the money elsewhere, where it will really benefit people, particularly the Indian people.

Federal intervention in traditional State jurisdictions of managing our fish and wildlife resources has become a creeping and insidious monster that has left everyone confused and bewildered. It is not realistic to have fragmented management decisions, many of which are conflicting and damaging to the resources, to be made individually by a multitude of Indian tribes and agencies as we have seen take place today. We want our State Fish and Wildlife Department to maintain the full responsibility for managing our fish and wildlife resources for all of its citizens.

Increasingly stringent and demanding Indian claims for alleged fishing rights, based on interpretations for outmoded and obsolete Indian treaties by tribal lawyers, the Federal agencies, and the Federal Courts, have created some depressing and unbelievable nightmares for us.

The Columbia River Fishery is an example of a serious unworkable and unmanageable resource problem created largely by the U.S. Government. This can only be resolved by Congress. We are asking that this be done in light of modern growth and development.

We have some very great concerns about seeing the terminated and nonrecognized Indian tribes actively seeking the same superior hunting and fishing privileges as the recognized reservation tribes on the Columbia River. Our coastal and interior streams are small, fragile and delicate. They cannot stand an Indian gillnet fishery. The decision was made long ago to remove nets from these rivers.

Recent court decisions on these special Indian hunting and fishing privileges are becoming very unpopular with the general public because of their unfairness. They are also creating hardships and harassment to other resource users. We are vitally concerned about the impact of present and future court decisions upon the future of our fish and wildlife resources. Rightly or wrongly, Indians are being blamed for the mess created by the courts. They are increasingly being pictured as being very greedy and of wanting the better of two worlds, or two civilizations. As a result, their former highly respected image is suffering. It would appear that the Indian tribes would want to resolve these injustices for their own self-respect and reputation. Indians have often stated their special hunting and fishing privileges as "rights" but in actuality they are only claims; non-Indians have their "rights", too.

Neither we nor the Indians should be responsible for any acts of former generations. It is also not fair to have the bite put on non-Indian individuals and the states by the Federal Government for problems it created for us. We are having to defend ourselves against the Federal Government and this is wrong and unjust.

It must be recognized that hunting and fishing is sacred to most of us, not just to Indians. Many of us are not too far removed from having to hunt and fish for a subsistence. This is the reason why this superior hunting and fishing privilege granted to the Indians by the courts has become such a hot and emotional issue among non-Indians. It is sacred to us.

Mr. Paul F. Blair, a Seattle attorney and a long-time defendant of Indian causes, states his hypothesis in an article entitled, "The Indian—One Big Exception" which appeared in the Seattle Post Intelligencer on Monday, August 30, 1976. His hypothesis is "That until the American Indian enjoys the same legal rights in his person and his property as all other Americans, he is doomed to ethnic failure." We concur with this and believe the time is long past overdue to have no distinction between an Indian and a non-Indian. Mr. Blair further states that the Judge Boldt Decision on the Indian fishery is not sound fishery policy and not sound national policy. We also concur with this.

In the interest of justice and fair play, we are asking the cooperation of this Commission, and of our Indian contemporaries, in resolving this entire hunting and fishing issue, for once and all. This will permit Indians and non-Indians to enjoy exactly the same privileges and be subject to the same laws, rules and regulations. We believe that this is a reasonable exchange for all Federal, State, and local program benefits provided to Indians in the past, present and future, which could be expressed in billions of dollars. We have asked that all American Indians also show good faith to our non-Indian society.

Again, in closing, let me urge you to resolve this hunting and fishing issue as rapidly as possible.

We thank you for permitting us to testify.

## STATEMENT OF FRANK AMATO, EDITOR, SALMON TROUT STEELHEADER MAGAZINE

Chairman Abourezk. The next witness is Frank Amato, editor of the Salmon Trout Steelheader magazine.

Now, is that the publication for this organization?

Mr. Amato. No; I am going to explain that. First of all, my name is Frank Amato and I have published my own magazine, which is called Salmon Trout Steelheader. I am here speaking on behalf of Salmon Trout Steelheader, but before I say anything, I would like to make it perfectly clear that the *Boldt* decision and what I have to say about steelhead is not economically motivated in the least bit. I have no economic motivation.

In addition, I am also a national director of Trout Unlimited, elected by steelheaders in the State of Oregon. But I am not speaking in that capacity.

Chairman **Abourezk**. You are speaking only as an individual?

Mr. **Amato**. Just as the editor of the Steelheader, my own magazine. It has a circulation of approximately 20,000 in the Pacific Northwest and also California.

First of all, I would like to thank you for coming out here to Portland to hear about our problem, which is really quite serious, especially when you consider the fact that there are something like 2 million fishermen in the Northwest out of a population of maybe 6 million. One in three, almost better than 50 percent of the male population, fishes.

It is a bit unfortunate in a way that you cannot spend more than 4 hours to consider a problem that is 100 years old, if not older, and one which raises the emotions and raises such tremendous criticism of the Federal judiciary in the Northwest.

Chairman **Abourezk**. If I can interrupt, Frank, I intend to spend much more time on it. It is just today that I can only spend 4 hours. I can see that we are just beginning.

Mr. **Amato**. That is really great.

I have virtually never been out of the Northwest and never to Washington, D.C. I appreciate this opportunity to say——

Chairman **Abourezk**. Four hours is all you would want to spend out there. You would get caught in the Watergate scandal if you were out there.

Mr. **Amato**. One other thing: I would like to mention that I am going to read what in effect is kind of an editorial in the current issue of the Steelheader, which summarizes, in a way, the social problems that we have in the Northwest, because the fisheries problem in many respects is a social problem.

Now, none of us in the Steelheaders—and myself, as editor of Salmon Trout Steelheader—are motivated racially. What we are trying to do is to be as objective as possible about the fish.

This is titled, "The Boldt Decision: Sport Fisheries Watergate."

> The headlines in Oregon's largest daily newspaper, the Oregonian, read "Coos Indians to defy Oregon's game rules."
>
> The same lack of respect for State fish and game regulations is evident on the part of many Indians, not only in Oregon, but also in Washington, Montana, California, Michigan and many other States, as well as in British Columbia.
>
> Against the overwhelming wishes of 6 million citizens in the Northwest, a handful of Indian tribes continue to gillnet tens of thousands of steelhead trout, a recognized State game fish in both Oregon and Washington, with the Federal Court's blessing.
>
> The fact that we sport fishermen have paid to raise the great majority of these Indian gillnetted steelhead seems to have escaped Judge Boldt. Watergate was a secret threat against democracy and justice. Boldt's failure to recognize hatchery-raised steelhead and sports fish, in that we paid to raise them, is almost unbelievable!

Puget Sound tribes especially seem intent upon gillnetting and not only their court-allotted fair share, 50 percent plus, but as many more as they can get away with; on some rivers up to 80 percent and more.

Tacoma Federal Court Judge Boldt, meanwhile, finds himself in the middle of a fantastic bureacratic mess, which he created.

Our Presidential hopeful, Jimmy Carter, campaigns on reducing government bureaucracy by combining agencies to streamline decisionmaking, the Honorable Judge Boldt is building the craziest bureaucracy yet seen in America.

Boldt says that all the Indian tribes, 13 or more, can set their own regulations, seasons, gear regulations, places to fish, and these are all in addition to the regulations set for the rest of us by the State Fish and Game Departments.

I wonder if it is American taxpayers who are footing the bill for all the new Indian tribal fisheries committees which need to purchase expert biologists' advice plus tribal enforcement personnel in order to set and enforce their fishing regulation?

Recent Gallup Polls have indicated a tremendous lack of confidence of American citizens in the ability to act of the U.S. Congress. Yet it is this same Congress that eventually must settle the Indian fishing and hunting rights question.

Each week new problems and questions arise as a result of judicial decisions. Nothing seems to be finally solved or answered. State fish and game management agencies find it impossible to manage the resource.

The Senators and Congressmen of this State of Washington report that the U.S. Congress is in no mood to discuss Indian fishing and hunting rights questions.

As far as I am concerned, these Congressmen have failed to open up a Congressional dialog stating the problems. They should all be turned out of office. Senators and Representatives who want to solve problems rather than sit on them should be elected.

Washington State and Federal office holders, as well as bureaucrats, say that what we need is more fish, that this will solve the problems. Yet biologist Lloyd Royal's steelhead study determined that once a certain planting point was reached additional steelhead smolts were only a waste.

In other words, there is good evidence that you can't increase runs of steelhead when Puget Sound streams are currently being gillnetted by Indian tribes.

If the Federal Government were to dump in *x* million amount of dollars, there is a very good chance we could not increase the steelhead run over and above what it already is, simply because it would reach a point of diminishing returns in your planting.

I believe that many Washington rivers are already at that saturation point. The people who say, "What we need is more fish" are only half answering the problem.

Simply put, what is it that sport fishermen want the Indian treaty fishermen to do? The answer is to lay off the steelhead trout. If Indian gillnetters would leave steelhead alone, a large part of the problem would disappear.

Salmon are looked upon by all parties as food fish, or commercial fish.

The steelhead has been elevated to game status by the legislature in Washington and by an overwhelming vote of the people of Oregon.

The major question whether Indians should continue to gillnet steelhead and especially those raised with sport fishing license money is a volatile one. We see in it a mirror of the emotions raised in the Northern Ireland question, the Cypriot question, the Arab-Israeli question, and the Lebanese question.

It is a credit to both sides, but especially to sport fishermen, that they have not turned to violence and done things such as destroy Indian gillnets. The struggle has been fought in the courts and will hopefully be fought even more so in the future in the U.S. Congress.

It is unfortunate that the U.S. Congress seems to wait until the crisis is at hand before it attempts to solve it.

But the crisis is building in State after State, and the pendulum will inevitably start to swing the other way when sport fishermen and hunters are pressed against the wall by continuing Federal court decisions that lack commonsense and thus any public support.

**It's about time that a group of regional Congressmen assemble and determine to give some legislative order and direction to the maze of court decisions which only continue to bring the dense fog down lower, putting most everyone in an ugly mood.**

I could say a lot of other things, but what in effect all this speaks to is there is a fantastic problem. It seems like it is necessary for all parties to get together, and not only Oregon and Washington, but like Mr. Voss was saying, in California they are starting to shoot guns down on the Klamath River.

In the State of Michigan there has been another court case, I think it is *U.S.A.* v. *Michigan*, which is similar to the *Boldt* decision.

I think there are approximately 70 other court cases that have been started because of the *Boldt* decision.

Some kind of policy needs to be determined. We can't continually wait and wonder and let the lawyers kick it back and forth in the courts.

Chairman ABOUREZK. I think it would be better for some settlement to be made, preferably by negotiation between the different factions.

I don't think you can continue the emotionalism and the anger that is present on both sides and expect to have anything good come out of it.

So I would tend to agree with you in that regard.

Senator HATFIELD. Mr. Chairman, could I ask a question of Mr. Amato?

I was intrigued by your reference to this fish biologist relating to a point of diminishing return on planning on smolt. Have we reached that point at this time?

Mr. AMATO. In the case of some of the Western Washington Puget Sound area streams, I think very much so.

And probably this would also be true of the Oregon coast streams.

The only case where there might be some possibilities might be the upper Columbia, where there has been so much destruction of adult fish returning that you don't have enough spawn in the stream, and consequently might be able to put more steelhead smolt from hatcheries in. I don't know how this works with salmon, but with a steelhead, when they are released they are substantially larger than salmon and maybe 6 to 7 to 8 inches, and they immediately start competing with each other for the available food resource in the stream as they are migrating down to the ocean.

And if the available food resource is already being used by the wild fish there or maybe by an overflow of hatchery smolts, you just reach a point of diminishing returns.

No matter what you put into the system, the same thing comes back out of it.

Senator HATFIELD. Very helpful. One followup question.

Mr. AMATO. Yes.

Senator HATFIELD. Would that be a point of view held by a majority of fish biologists?

Mr. AMATO. I can only speak for myself. Dr. Lloyd Royal wrote the report for the Washington State Department of Game, and I can't really say with all matter of fact.

I am sure Dr. Donaldson could probably find out.

Senator HATFIELD. Thank you.

Chairman ABOUREZK. Mr. Amato, the material you have submitted will be made a part of the record.

Mr. AMATO. Thank you.

[The material follows:]

## YOU BE THE JUDGE

(By Hugh J. Rosellini, Washington State Supreme Court Justice)

[EDITOR'S NOTE: Federal District Judge George Boldt has given many Western Washington Indian tribes the opportunity to gillnet from 50 up to 90 percent of the steelhead you pay to raise by buying a fishing license.

[The Washington State Supreme Court recently decided that Indians have no right to harvest steelhead paid for by sports men. I asked Washington State Supreme Court Justice Hugh J. Rosellini if I could reprint his concurring opinion in the case.

[Hopefully when the U.S. Supreme Court reviews this case, it will agree with Justice Rosellini's common sense approach and not "draw ideas out of the air" as did Judge Boldt.]

Rosellini, J. (Concurring). I concur in Justice Hunter's scholarly interpretation of the Medicine Creek Indian Treaty. This interpretation should dispose of the case.

However, Justice Hunter felt compelled by the language found in *Washington Game Department* v. *Puyallup Tribe*, 414 U.S. 44, 38 L. Ed. 2d 254, 94 F. Ct. 330(1973), to review the determination of the amount of catchable fish to be apportioned between the commercial Indian net fishery and the hook and line fishery of other citizens.

I believe that any apportionment of the fish run is contrary to the treaty and the Constitutions of the United States and Washington. Apportionment cannot be sustained by the law, or the facts in the case.

I find nothing in the language of the Treaty of Medicine Creek, 10 Stat. 1132, or in the Treaty of Point Elliott, 12 Stat. 927 (2 Indian Affairs Laws and Treaties 669 [1904]), that would even imply that fish runs were to be apportioned between the Indians and the white settlers. In fact, the treaties negate any such interpretation.

The exact language of the treaty incorporated as it was in other similar treaties contemporaneously negotiated with tribes makes it clear that Indians were not to be excluded from fishing at their accustomed grounds, but these rights were to be coextensive only with the citizens of the territory. Thus, the Indians shall have all fishing rights that all the citizens have, and no Indian or non-Indian shall have any superior rights.

Any other interpretation would distort the obvious meaning of the language.

Article III of the Treaty of Medicine Creek as noted, says:

"ARTICLE III. The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the Territory, and as erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands: *Provided, however*, That they shall not take shellfish from any beds staked or cultivated by citizens, and that they shall alter all stallions not intended for breeding horses, and shall keep up and confine the latter. 10 Stat. 1133."

There is no word in any of the Articles or in any other treaty to suggest that either the Indians or the white settlers intended that Indian tribes have a superior right to fish not equally available to citizens of the Territory.

The treaty made with the Quinaielt, Quillehute, and other tribes, 12 Stat. 971–72 (2 Indian Affairs Laws and Treaties 719–20 [1904]), employs identical language to the Treaty of Medicine Creek concerning the right of taking fish in common with all citizens of the territory.

The Treaty of Point Elliott, 12 Stat. 927, 928, with the Dwamish, Suquamish, and other tribes employs the same language used in the Treaty of Medicine Creek and the treaty with the Quinaielt and Quillehute:

"ARTICLE V. The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and at erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. *Provided, however,* that they shall not take shellfish from any beds staked or cultivated by citizens."

None of these treaties contains a hint that the Indians would acquire fishing rights superior to the citizens of the territory, or that the Indians would have a property right to forty-five percent of the fish runs or any fraction of any fish run. The treaty gave the Indians and settlers a right to be held in common: the privilege or opportunity of catching fish.

Similarly, in the Treaty of Point no Point, 12 Stat. 933, 934, Article IV declares that

"[t]he right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the United States; * * *"

It will be noted that there is a minor departure from the language of the three other treaties in describing the settlers as citizens of the United States rather than as citizens of territory. One cannot find from this treaty or the three other treaties any language which gives exclusive off-reservation fishing rights or any apportionment of the fish runs.

What the treaty said is that Indians should not be barred from an opportunity to fish any more than the settlers were denied the right to do so.

A treaty signed in June, 1855 in Walla Walla Valley between the United States and the Walla-Walla Tribe, 12 Stat. 945, 946, illustrates that the Indians and the United States were capable of using explicit language when it was desired to give exclusive rights to Indians to fish.

Article I of the treaty says:

"[T]hat the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians, and at all other usual and accustomed stations in common with citizens of the United States, and of erecting suitable buildings for curing the same; the privilege of hunting, gathering roots and berries, and pasturing their stock on unclaimed lands in common with citizens is also secured to them."

It can be seen that in the Walla-Walla Treaty, the Indians reserved the exclusive right to take fish from the streams running through and bordering said reservation and outside their reservation in common with the citizens of the United States. There was no difficulty in selecting the words to convey the separate ideas of "exclusive rights" and "rights secured in common" with the citizens of the United States.

The precise distinction between exclusive and shared rights held in common with the citizens of the territory were made in a treaty with the Yakima Indian Tribe. (See 12 Stat. 951).

A reading of all the treaties which were signed at about the time of the Medicine Creek Treaty in 1854 makes it clear that where an exclusive right was intended, and when a right to fish in common with the settlers or citizens was intended, language was used precisely to express the idea of exclusive rights and non-exclusive rights.

If it was intended to give 45 percent or any other portion of the fish runs to Indian or White citizens, language could have been used to express that intent. I find not even a hint that this was the intent of the treaties. I am sure that a treaty which would have given away any percentage of the fish runs would not have been ratified.

It must be remembered that the United States was inhabited by persons who left their homeland because of religious or political discrimination. They left also because of economic discrimination. It must be remembered that game belonged to the King and the estates of the lords. No one could hunt or fish without the consent of the King or the lords.

In fact, poaching was a crime punishable by imprisonment or death. Thus, it would have been inconceivable that the citizens or settlers of the United States would have allocation of fish or game.

In any event, Article VI of the United States Constitution reads:

"This Constitution, and the laws of the United States which shall be made in pursuant thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; * * *"

It will be seen that the United States Constitution, the laws made pursuant thereto, and the treaties are the supreme law.

The laws enacted must pass the test of constitutionality. The treaties which are passed may not violate the Constitution and may not deprive the citizen of any of his constitutional rights.

Treaties are part of the domestic law and where, as in this case, both parties to the treaties are citizens of the United States, the provisions of the Constitution apply.

Otherwise, the Executive and the Senate could by treaty which involve rights of the citizens disenfranchise a class of citizens.

Any treaty rights that give Indians superior rights denies the equal protection of other "citizens" rights.

Let me further state why I think an apportionment of the fish run is legally incorrect.

It must be remembered that the steelhead fishery is financed by the purchase of fishing licenses and steelhead tags by the fishermen.

None of the taxpayers' money is used for hatchery planting programs in restocking the rivers, except a very small amount furnished by the Federal Government:

Without the hatchery-reared steelhead planted in the rivers, there would not be any fish to catch and there would not be a natural run.

My conclusions are based on the following facts which logically follow from the planting statistics, and take into account the misconception of what is natural and what is native steelhead.

The record disclosed that natural or native steelhead is arbitrarily defined as any steelhead that does not have any hatchery marking. The record disclosed that the progeny of the hatchery-planted steelhead under this definition is arbitrarily counted as a natural run of steelhead.

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Without the massive infusion of the hatchery fish, the steelhead runs subject to the net fishery would have been depleted.

The evil of permitting net fishing for steelhead is that it will devastate the run. The net fishery on the Skagit River exceeds 57 nets. Many of the nets are placed alternatively from one side of the river to the center of the river.

The nets on the opposite side are placed alternatively so that they intercept the nets placed on the other side of the river. The effect is to block all upstream fish.

Steelhead are different from salmon, which spawn and die. Steelhead will spawn and live to return to spawn again.

They are in a very poor condition after spawning and are regarded as unfit to eat. The nets not only take all the steelhead going upstream to spawn, but will catch all of the steelhead which have already spawned and are returning downstream.

Runs of steelhead enter rivers at different times during the season. It is possible to deplete the run at a certain period.

It is urged that proper regulation can control the situation; however, the record is replete with evidence that a net fishery cannot be successfully regulated.

The inefficiency of the enforcement of the regulation is shown by the fact that in December 1975, the Indians caught 2,476 fish on the Puyallup River, while 1,341 sportsmen fishing by line and hook, caught only 102;

In Western Washington's Green River, 12,000 non-Indians caught only 50 fish, while Indian netters took 4,839.

On the Skagit River, 893 sportsmen caught 83 fish while the Indians netted 2,367 fish.

Conservation means the wise use of the resource, and in the management of steelhead there must be necessary escapements for needed spawning to insure the perpetuation of the resource.

The manner of fishing must be such that it can be controlled so it does not impair or damage the necessary escapement; and, further, the manner of fishing itself must not be destructive.

The Department of Game, in order to conserve the steelhead runs, has placed limitations on the manner of fishing and the catch limit of steelhead.

Non-Indians must fish with line and hook (as opposed to the Indian net fishing), and the non-Indian is limited to the maximum of 2 per day and no more than 4 in possession and a maximum of 30 per season.

This case is entitled *Department of Game* v. *Puyallup Indian Tribe, Inc.* It suggests that the tribe itself is benefiting from the net fishery.

However, the record shows that there are approximately 850 members of the Puyallup Tribe, of which 320 are over the age of 21.

Twenty Puyallup Tribe fishermen fish essentially full time, 20 part-time, and an additional 20 fish only occasionally.

The commercial value of steelhead caught by the Indians is approximately $10 a fish. The individual fishermen keep the proceeds of their fish sales and this money is not shared with the tribe.

How can an apportionment of the catch, as found by the Court, or forty-five percent of the fish runs be equitable, fair, or conscionable when sixty Indians are allocated such a large proportion and thousands of non-Indians must share the remainder?

Under the Treaty of Medicine Creek, the only guarantee to the Indians is their right to the opportunity to fish. The treaty did not guarantee them any portion of the fish.

Even if apportionment is permitted, should not the fish be divided more equitably between the non-Indians sportsmen and the Indians?

It must be remembered that before the incredible doctrine of apportionment was announced, the Indians had the same right to fish, and in the same manner as non-Indians.

The treaty Indians could fish as sportsmen or as commercial fishermen, whether it was by troller, gillnetting, or set net.

Heretofore, all citizens, whether Indians or non-Indians, were treated as equals. Now, the courts have decided the rights of other citizens are inferior to Indian rights.

I cannot subscribe to such a doctrine. I would hold that the treaty does not permit or contemplate any allocation of the fish, but rather the opportunity to fish and catch fish in the same manner as any citizen.

I would take cognizance of the fact that fishing with fixed nets will devastate the fish runs and jeopardize one of the greatest natural resources of this State, a result which could never have been intended by any party to these treaties.

## SILETZ DILEMMA

### (By Phil Bladine)

[EDITORS NOTE: A state suggested amendment to the Siletz Indian Restoration Bill would protect the rights of the State of Oregon to manage its fish and wildlife for all citizens. So far, it has been refused by the bill's two co-sponsors, Senator Mark Hatfield and Representative Les AuCoin. Phil Bladine, who supports the amendment, is running for the congressional seat held by Les AuCoin.]

Chaotic status of the Columbia River Salmon Fishery, under impossible management regulations laid down by the Federal Courts, has turned the once plausible Siletz Indian Reservation restoration proposal into one of the most controversial issues facing us today.

There are few Americans who do not view with regret the treatment afforded American Indians during the pioneer expansion era of our nation.

Establishment of most reservations was handled with near barbaric procedures with little consideration given future welfare of the Indian nations.

Certainly this was true in 1855 when various western Oregon tribes were herded together on the 1,382,000-acre tract between Cape Lookout and the Siltcoos River.

Inroads by white settlers, acts of Congress and administrative edicts eroded both their lands and numbers by 1954 when reservation status was terminated.

Proposals for restoration of Siletz Tribal status. H.R. 11221, sponsored by Representative Les AuCoin and S. 2801 sponsored by Senator Mark Hatfield, seek to provide some two thousand Indians Federal employment, health, welfare and educational aid now available to treaty tribes.

Sponsors backed by State and Federal officials and legal counsel, believe the measures provide no advantages to claim aboriginal hunting and fishing rights not already available.

Indian spokesmen say they do not seek such rights.

Resource management officials disagree

Representatives of Oregon's Fish and Wildlife Commission has proposed two alternatives: Include within the bills a provision requiring the Siletz to conform to State resource management laws or pass legislation giving Siletz people necessary benefits without reestablishing their reservation. Neither seems acceptable to Indian leaders because it might prove a precedent for satisfying similar claims in other areas.

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Meanwhile, sports men and management experts are increasingly concerned over militant demands by tribal representatives for up to total control of some resources.

John McKean, retired Director of the Oregon Fish and Wildlife Department, noted in a recently-published article: "At the January 30 hearing of the Columbia River Compact on a draft comprehensive plan for apportionment of Columbia River fish, spokesmen for the tribe clearly stipulated that they desired an option which would have terminated all non-Indian fishing in the ocean and Columbia River, both commercial and recreational."

Similar pronouncements have been made in regard to Puget Sound fisheries, and the State of Washington has totally impossible management conditions under the Federal Court decisions.

Sportsmen know our fragile coastal stream fisheries, long free of commercial harvest, could not be maintained for common usage under similar court decisions.

Lurking in the background, meanwhile, is the possibility the courts will move to accept new Indian ancestral claims to timber, minerals and water resources on lands they once held.

It is frightening to consider the potential havoc from decisions such as that handed down by Judge Boldt in Washington and Judge Belloni on the Columbia if applied to these Forest Service, BLM and other resource lands.

Unsettled claims by many Indian tribes, many of which far precede termination, must be settled either in Indian Claims Court or by Congress.

I fully agree with McKean that "the solution rests in ultimate recognition by Congress that any debt to Indian people is a national obligation which should be shared by all of the population." Payment of debt must not be shouldered by citizens of a particular region or endanger vital recreation and commercial resources which must be managed for the national welfare and common usage by all citizens.

It seems impractical to continue the course of mistakes our nation has followed in handling Indian needs over the course of our national history.

We have lurched and halted, lurched and halted on programs to meet their needs and provide access to first class citizenship.

The United States is a melting pot of ethnic people with great pride in its capability to forge those diverse groups into a cohesive national unity.

The process has not robbed each of pride of origin, color, religion or creed.

Only in our approach to Indian issues, with foundation on a great guilt complex, have we considered nearly separate national status within our boundaries for one particular people.

The issues we face in Oregon are repeated many times in other sections of the U.S.

Only Congress, after legitimate claims are settled, can enact decisions to solve these problems and perpetuate those resources which must be protected by sound state management.

John McKean strikes a receptive note when he concludes: "I have much sympathy and respect for Indian people, but I also believe that the constitutional principal that all citizens shall have equal opportunity should prevail in the apportionment of the State's fish and wildlife resources. I hope to live to see that day."

## COMMERCIAL INDIAN GILL NET FISHERIES ON THE KLAMATH AND TRINITY RIVERS IN CALIFORNIA SPELL HARD TIMES FOR SALMON, STEELHEAD, AND SPORT FISHERMEN

(By H. L. Joseph, M.D., Chairman, Steelhead Committee California Trout)

Dear Bill: Every "low water year" is destructive to California coastal stream steelhead, and 1976 is one of the worst on record. Coastal streams are dry or drying up, and populations of juvenile anadromous fish are being decimated in huge numbers. Last spring's late rains saved some of the fish in the more northerly streams, allowing smolts to escape, generally the year has been a disaster, more so towards the south.

As streams dry up, predatory birds, mammals and snakes finish off the remaining small fish which manage to survive high water temperatures. The entire food chain is effected adversely.

Man, the predator, did his part last winter when low, clear water made steelhead more vulnerable. Several "sportsmen" were heard boasting of having killed over one hundred steelhead during the season. The impact of this dry year will be felt by anglers at least until 1979.

Re the Indian netting on the Klamath and Trinity, a state of confusion exists, and nobody seems to know exactly what is happening, or if they do, they won't discuss it.

There are no means for accurately assessing the effects of the nets on the salmon and steelhead.

The Department of Fish and Game has no legal authority on the reservations and has adopted a "hands off" position.

Current steelhead policy as adopted (in part) last year by the Commission states: "The Department shall develop and implement programs to measure, and, where appropriate, increase steelhead population size and angler use and success, consistent with the objectives of providing quality angling and maintaining a healthy resource."

So far, no such programs have been implemented, and fish populations, angler use and success remain unknown quantities.

Until such vital baseline information is obtained, how can the effects of the nets be determined?

The Department of Fish and Game still mightily resists efforts to try a punch card system, with the argument that it would mainly measure only "fishing conditions".

Nevertheless many observers strongly believe the netters are over-harvesting the fish, particularly salmon.

Reportedly, the mesh has been large enough to allow most steelhead through, but we have heard stories of nets with smaller mesh; however, as runs arrive, more nets go out.

Rumors are rampant about the commercial sale of the fish and about possible regulations of all fishermen on the reservation.

Apparently the netters are somewhat organized but have many problems on which they cannot agree amongst themselves.

At least there is the potential for serious damage to the fishery.

Legally, the Indians have the rights for the unrestricted harvest of fish and game on the reservations.

A 1969 court case extended their rights to include the lower twenty miles of the Klamath in addition to the lower 12 miles of the Trinity and the Klamath for 20 miles below Weitchpec, which they already had.

A 1969 court case extended their rights to include the lower 20 miles of the Klamath in addition to the lower 12 miles of the Trinity and the Klamath for 20 miles below Weitchpec, which they already had.

The unrestricted rights date from a May 27, 1975 court decision which started with the 1969 case and finally denied an appeal by the State for the authority to regulate hunting and fishing on the reservation.

This was a long legal battle in which the State Appellate Court affirmed a lower court decision. Subsequent appeals by the State were denied both by the State and U.S. Supreme Courts.

A suggestion: Everyone, Indian netters, sport and commercial fishermen, resort owners, landowners, and others, stands to lose if the fishery resource is seriously and permanently damaged.

Already fish habitat has suffered terrible destruction from which it may never recover.

Some type of management regulations on the reservations, based on sound biological principles, are essential.

Since the authority rests with the Indians, let them exercise it by issuing guidelines, with professional fishery biologists acting as technical advisers; however, unless the Indians can agree among themselves on a definite course of action, settlement may be impossible and the resource lost by default.

If agreeable, an independent authority for fishery management could be established, with representation from all concerned groups, but first communications must be opened before more tempers flare and the groups become more polarized.

As hoards of steelheaders descend on the rivers this fall, some sort of regulations may be necessary to protect them as well as the fish.

Cal Trout attempted to arouse the interest of a professional environmental arbitrator in Seattle, but there has been no response.

Cool heads are needed which are willing to trust each other and talk at length until the matter is settled before it is too late.

## OPEN LETTER TO SENATOR MARK HATFIELD

(By Frank W. Amato)

Dear Senator Hatfield: I am extremenly concerned about the Siletz Restoration Bill and feel that I must oppose it until Congress guarantees to the State of Oregon the right to manage its own fish and wildlife resources. I do want the involved Indians to receive all the help that would be made available to them through restoration of their tribal status; however, I do not want to see Oregon's fisheries program destroyed as has happened in the State of Washington.

Because of the state of affairs in Washington, the NW Steelheaders Council of Trout Unlimited will become very active in the next few months in showing the citizens of the Northwest how they are being ripped off by Federal Judges Bolt and now Belloni.

We have appealed our case to the U.S. Supreme Court, and they have refused to consider it. So now it is time to go to the people.

Good law as well as good interpretation of the law must be based on common sense. Judge Boldt's Decision lacks common sense (and thus popular backing).

It will be our objective in the next few months to publicize some or all of the following injustices which are being perpetrated on the citizens of the Northwest because of the rigid, uninspired interpretation of one judge (now apparently backed up by the U.S. Supreme Court).

### JUDGE BOLDT'S DECISION

The words "in common" in the treaties, reserve to the treaty tribes the right to all of the following: (a) all the fish they can catch on reservations; plus (b) all the fish they can eat; plus (c) all the fish they can use for ceremonies; plus (d) fifty percent of all of the harvestable fish that reach their "usual and accustomed grounds and stations"; plus (e) extra fish to replace fish that do not reach the "usual and accustomed grounds and stations."

Judge Boldt's Decision lacks common sense and is unfair to the citizens of the Northwest for these reasons:

1. Who pays for raising the steelhead trout (and salmon) which treaty Indians are catching in their gillnets? The answer is, you do.

Your fishing license money goes to raise the steelhead trout Indians are gillnetting.

In addition, each time you purchase a piece of tackle, you pay a hidden Federal Excise Tax.

That money is also your tax money and goes to raise fish which are caught in Indian gillnets unregulated by the State.

Judge Boldt has allowed Indian commercial gillnet catches of steelhead trout to exceed eighty percent of the harvestable run in some streams. The Indians do not pay anything to maintain the fishery!

2. Sport fishermen conservationists have long tried to save wild runs of steelhead trout (those which spawn in the wilds, unaided by man). Wild runs are very valuable because of their special genetic adaptation to each stream.

Also, wild steelhead trout provide sport anglers with a greater size range than do hatchery steelhead trout. Esthetically it is pleasing to hoop and release a wild steelhead trout.

Indian gillnets do not discriminate between wild and hatchery steelhead; they kill all fish whose gills get entangled in the web of the net.

Tribal Indian gillnet fishermen will probably destroy the genetic pool which makes large steelhead, for their gillnets will always select the largest, most robust fish to kill, while letting a few smaller fish go through.

When sport fishermen hook a large steelhead on sport tackle, the big fish usually gets away unharmed.

If you get away from a gillnet but have your gill torn (which is easily done), you bleed to death.

3. Over the years, the states of Oregon and Washington and the Federal Government have allowed a large steelhead trout sport fishery to develop. Approximately 350,000 anglers fish for steelhead in the two States. Then along comes a Federal judge who gives up to eighty percent of the steelhead in the Puget Sound case area to a few hundred Indian commercial fishermen. Thus, one judge wipes out what used to be a wonderful sport fishery enjoyed by and paid for by tens of thousands of sport fishermen.

We know Indians got a raw deal from both State and Federal Governments in the past. But is it fair when the Federal Government steps into a State and savagely cuts down a long-established sport fishery to make up for its own misdeeds of long ago? We feel that two wrongs do not make a right!

4. Just two years ago the citizens of the State of Oregon voted overwhelmingly to make the steelhead trout a game fish. In 1931 the Washington State Legislature made the steelhead trout a game fish. In both cases this was an indication on the part of the citizens in both states that they felt the steelhead trout was too valuable a resource to be caught commercially in gillnets.

5. Indians never had the means to fish for steelhead trout efficiently until the coming of Western technology. Yes, they could harvest a few steelhead with spears and dip nets, but it was the introduction of the gillnet that made it possible for Indian treaty right fishermen to clean out streams as they have been doing this winter.

For example, as of January 15 for the winter run on the Skagit River in Washington, sport fishermen had taken three hundred and two steelhead while Indian commercial gillnet fishermen had taken three thousand four hundred ninety-nine!

6. Judge Boldt has decided to qualify fourteen different tribes (if they meet certain requirements) to self-regulate their own fisheries. This is the same as throwing the fox into the chicken coop! Imagine, if you will, what would happen if we allowed the timber industry to regulate the national forests, or if the automobile industry were allowed to determine automobile safety standards, or if utility companies were allowed to set safety standards for nuclear power plants, or if the real estate industry were allowed to make zoning regulations. What kind of a mess do you have when fourteen Indian tribes attempt to set their own regulations on some of the same rivers? Where do they get expert fisheries advice? Who pays for it through the BIA (Bureau of Indian Affairs)? The taxpayer, you and I! There should be one single fisheries regulator, the State, in our opinion.

7. Judge Boldt attempted to help the Indians with his decision. Instead it has had a reverse effect.

Although a few Indian commercial gillnet fishermen are making good money selling their steelhead trout, which were raised with your tax money and mine, all Indians are losing the support and understanding of a large majority of the citizens of the Northwest. There is no doubt that we all ought to correct injustices done in the past to Indians. However, you do not correct one injustice by perpetrating another one on a much larger segment of Northwest society!

## STATEMENT OF RANNY RANCOURT, PRESIDENT, SAVE OREGON'S RESOURCES TODAY (SORT)

Chairman ABOUREZK. Mr. Ranny Rancourt.

Mr. RANCOURT. Mr. Chairman, Senator Hatfield, my name is Ranny Rancourt.

I speak today as president of Save Oregon's Resources Today, better known as SORT.

Formerly, this organization was called Save Oregon's Rainbow Trout and it was this group that was responsible for measure 15 which was passed in November 1974. That finally gave steelhead trout its rightful designation as a game fish.

Incidentally, 458,000 people voted for that measure, over 60 percent more votes than Governor Straub got.

Naturally, we are elated by the landslide vote, but our cheers had hardly died down when we faced another problem much more devastating and broader in scope.

I refer, of course, to Judge Boldt's decision and I will skip part of the testimony in the interest of time.

Judge Belloni ordered the Fish and Wildlife Commission to develop a comprehensive plan that would result in the 50-percent harvest by the Indians.

The best expert in fish management has not been able to arrive at a satisfactory solution—and they have been working on it, believe me—as it is a near impossible decree.

Figure, if you will, several runs of anadromous fish intermingled in the ocean—salmon and steelhead destined to return to the many different streams where they were spawned. Some are heading for the lower rivers below Bonneville Dam, the Williamette, the Cowlitz, the Toutle, and many others.

Downstream Columbia River hatcheries raise millions of fish and these will not go over the dams into the Indian nets, but will return to their native water. And also, of course, we have the coastal streams along Oregon and Washington.

Yet the Federal judges have ruled that the treaty Indians are entitled to 50 percent of the fish still in the Pacific Ocean.

How in the world can anyone tell how many salmon and steelhead caught by offshore trollers, charter boat operators, and private sports boats were destined to go over Bonneville Dam? Again I say it is impossible for anyone to arrive at an accurate figure, even the most able biologists. It is a directive that cannot be implemented.

The section of Judge Boldt and Belloni's ruling that the non-Indian fishermen cannot understand is how he arrived at the 50-percent figure. "Fishing in common with" the wording in the treaty does not mention a particular percentage. Rather, I believe that one could take it to mean that one could take it to mean that every citizen's share should be equal.

As you know, Indian problems are springing up all over the country.

As was already mentioned here, on the west coast the Klamath Indians, who were well paid for their land by the Federal Government, now claim exclusive fishing and hunting rights on their reservation, and have defied the Department of Fish and Wildlife attempts to regulate and manage the fish and game population.

Just recently, a California tribe declared arbitrarily that the Klamath River Indian lands were off-limits to non-Indian users, and ordered them off the land at the mouth of the river.

They planned to declare an exclusive Indian fishery on the entire length of this famous fishing stream.

Where is it all going to end? We feel that drastic congressional action is necessary to stop this movement before it engulfs us.

I am sure that you are aware that this takeover is spreading all over the country, not only in fishing and hunting but also in timber rights, water rights, and mineral rights.

Sportsmen who pay for the largest share for propagating and the management of fish through their purchase of licenses and tags, in addition to the Federal tax on fishing equipment, are becoming more disenchanted with these developments.

If they refuse to buy licenses, and many whom I have talked to are considering it, who then will pay for the rearing and administration of the fishery?

Not the Indians; they don't buy licenses; they don't pay poundage fees. They have a free ride at other's expense.

I trust that this Commission will return to Washington with a much better knowledge of the severity of the crisis after reviewing the testimony today and will request immediate action by the Congress to remedy this deplorable situation.

I thank you.

Chairman **Abourezk.** Mr. Rancourt, I just have one comment.

Some of your testimony is rather inflammatory. I can see why it might be difficult for non-Indians to sit down with Indians and try to discuss the matter.

When you speak in these terms—maybe you don't even want to sit down.

But if I can just offer a free suggestion—I won't charge you for it—and it is probably worth what you pay for it. But it might be more beneficial to you and the people you represent if you were able to sit down and rationally discuss this thing with the Indian tribes and other people. I understand both sides have their point of view, and that cannot be discounted by anybody. But it should just seem to me that inflaming the issue in this nature is just not going to help matters at all.

Now, maybe you know better than I do, but I——

Mr. **Amato.** Senator, you continually say that we should sit down with the other side and discuss the problems. I think we are at an impasse in the case of the Siletz restoration bill. We did sit down with the other side, and what we asked for was an amendment that would guarantee that the State of Oregon would maintain the right to manage its own fish and game resources. This was unacceptable to the Indians. It was the only thing acceptable to us to protect what we believe in.

Consequently, we are at an impasse. There seems to be no more sitting down. Where do we go from here?

The reason we have a U.S. Congress is to solve Federal problems.

Chairman **Abourezk.** It is very true. The reason you have the U.S. Congress is to try to resolve these fairly, if the Congress is capable of doing that, which may or may not mean that they will agree with you or disagree with you. That is really a fact of life.

All I am saying is I think the question is broader than just the Siletz restoration bill. And if you can't sit down with people on the Siletz bill, you probably can't sit down with them on any other issue.

The only point I am trying to make is that you may not sit down ever and be able to negotiate, but I know one thing for sure, you aren't going to do it if people on both sides continue to inflame the issue. That is all I am saying.

Mr. **Amato.** I am sure that we have good feelings toward one another on both sides. There is no doubt. The problem is that, in a way, a lack of communication makes feelings worse. Communication really helps.

Chairman **Abourezk.** I agree with that.

Mr. **Amato.** But I think that we found with what communicating that has been done, that we haven't really gotten any place. If you look at western Washington, and the various rivers around Seattle that are in the *Boldt* decision area—maybe 20 or 30 rivers and 14 or 15 tribes—and then you think of sports fishermen organizations and sport fishermen, most of these people work 5 days a week. On Saturday and Sunday they hope to go fishing. They have very little time to sit down and talk to Indians, and they don't have any official capacity to do so.

It has just become an impossible situation. Sometimes standards have to be laid down.

Chairman **Abourezk**. Yes; I agree with that. I think it is better to take the time to sit and talk with them rather than take the time to shout at them. That is the only thing I am trying to say.

I understand people making a living have a difficult time. It would seem to me that their representatives, whose job it is to represent them and take the time, would then try and arrive at some reasonable accommodation on both sides.

I am not just saying it is the non-Indians. I think you probably also recognize—or at least I do, and I hope you do—that the impasse you are at now is the result of escalation over the years of a lot of problems between the two factions.

One side has mistreated the other and the other side has mistreated that one, and it just keeps building up. I would suggest that that escalation ought to stop before you sit down and arrive at any kind of a rational solution.

I don't really mean to keep repeating this, but I have just got to say that as a basis of this matter. The treaties that were written are not just pieces of paper; they are solemn documents, just like the contract that is written in any business.

If you sign an agreement to buy a house, you expect the other side to live up to that agreement. But in any event, these are actually living documents, they are not just obsolete pieces of paper that we are talking about. That is what comprises the basis of this very serious problem.

Now, the documents were arrived at because of an existing situation in the last century. If the Indians had been allowed to keep all this land, we wouldn't have needed the treaties, right? And they would have been able to fish for 100 percent of the fish, not 50 percent.

But the fact is the treaties were written and somehow we have got to try as best we can to look up to those obligations so that everybody can live fairly under these obligations and under the laws of the United States.

That is the only point I am trying to make.

Mr. **Voss**. May I just say one last thing?

I would like to show you our problem at this point. Yes, it is true, those treaties were written. That is important. But at the same time, 2 years have passed now and we are destroying a resource. In 2 more years a complete cycle. That is why we are so excited, that is why in another year, true, we may have a confrontation. That looks very bad, too. But two seasons have gone by and we have lost those native fish. We can't stand two more seasons because there won't be any more.

Senator **Hatfield**. Mr. Chairman, I think what you are saying is the treaty rights will have utterly no meaning if there is no resource to divide.

Mr. **Voss**. That is right, Senator.

Senator **Hatfield**. I think your point is well taken.

I would like to say that the chairman has just made a very judicious statement, with which I would be associated. I think it is illustrative, by Mr. Amato's reference to the Siletz restoration bill, that the mood and the whole atmosphere has been very difficult in this State, and the region, to deal with something that doesn't have anything to do with fishing and hunting rights now.

Mr. Amato indicated that an amendment was proposed to maintain the State's rights for fish management. If the State has present authority, there is nothing in the bill that will change that authority because it doesn't even address itself to fishing and hunting rights.

It explicitly states in that restoration bill, "Nothing in this bill shall constitute the granting of any fishing or hunting rights."

Mr. Chairman, we are not dealing with a treaty here because there is no existing treaty with the Siletz. Because of the frustration of that, the people in this area, Indian and non-Indian alike, feel that on a simple health and education bill—restoration of Siletz—was seized upon by some as a vehicle to try and solve this broader issue of fishing and hunting rights.

We are here today holding a hearing on that, and I think it only illustrates the kind of suspicions and mistrust atmosphere that has developed here.

It is very difficult to resolve conflicts under these circumstances, and if we don't resolve it soon we won't have any resources to be dividing one way or another.

Chairman **Abourezk**. That is true. I think you can lay it on Congress for vacillating for so many years on this decision. But I also hope you will agree with me that if you ask Congress to ram a solution down the throats of either side, without some kind of a rational dialog between the two sides ahead of time, that Congress might do something that one side or the other may not like at all. I don't think we ought to come to that point in the country yet. You can do that in a dictatorship, but I don't think you ought to do it in the United States.

Mr. **Amato**. We are almost guaranteed, too, that the situation will get worse and worse and worse until something has to be done. There is no doubt it is developing in States all across the country.

Senator **Hatfield**. That is why we are here.

Mr. **Amato**. Maybe there isn't enough pressure yet to have an accommodation among all the groups and parties.

What really raises the ire of northwest fishermen, I suppose, is the idea that steelhead are being caught in gillnets. In the case of Washington, there is maybe a quarter of a million steelhead caught per year by sport fishermen. Now that figure is down to maybe 200,000, because 50,000 of those are caught in gillnets.

So, in effect, you are talking about maybe 50,000 steelhead in the Puget Sound area and maybe 5,000 or 10,000 in the Columbia River.

This is one of the tremendous problems for sport fishermen. If there was some way to trade those steelhead for salmon, or some way to make some kind of a bargain between the two and keep the gillnets away from the steelhead trout—a recognized game fish on the part of the State—that would be very helpful.

Senator **Hatfield**. You get the Washington people to pass a referendum in that State, as we did in Oregon, to try to help.

Mr. **Voss**. We have had it since 1932, Senator, in Washington, it has been a game fish.

Senator **Hatfield**. You still have these differentials in the management policies.

Mr. Voss. We don't have them state-wide; it is only Federal-wide.

Senator **Hatfield**. Conflicting jurisdictions?

Mr. Voss. Yes.

Chairman **Abourezk**. Mr. Rancourt, your prepared statement is placed in the record.

Mr. **Rancourt**. Thank you.

[The prepared statement of Mr. Rancourt follows:]

### PREPARED STATEMENT OF RANNY RANCOURT, PRESIDENT, SAVE OREGON'S RESOURCES TODAY (SORT)

Mr. Chairman and Members of the Commission, my name is Ranny Rancourt, and I reside at 6805 S.E. 68th Avenue, Portland, Oregon 97206.

I speak today as President of Save Oregon's Resources Today, Inc., better known as SORT. The original name of the organization was Save Oregon's Rainbow Trout, Inc. (SORT).

This is the group that is responsible for the passage of Measure 15 which was passed by the people of Oregon in November, 1974, giving steelhead trout its rightful designation as a game fish.

Incidentally, it was a very decisive vote with four hundred fifty-eight thousand of the electorate or about sixty percent of the people in favor.

Naturally we were elated by the landslide vote, but our cheers had hardly died down when we were faced with another problem much more devastating and broader in scope.

I refer of course to Judge Boldt's Decision wherein he ruled that the treaty Indians were entitled to fifty percent of the salmon and steelhead, not only entering Washington streams but also those in the ocean.

This was soon followed by Judge Robert Belloni's concurrence which included the treaty Indians fishing above Bonneville dam in the Columbia River.

Since this bombshell has exploded among the sport fishermen, complete chaos has resulted.

Judge Belloni ordered the Fish and Wildlife Commission to develop a comprehensive plan that would result in the fifty percent harvest by the Indians.

The best experts in fish management have not been able to arrive at a satisfactory solution, as it is a near impossible decree.

Picture, if you will, several runs of anadromous fish intermingled in the ocean, salmon and steelhead destined to return to the many different streams where they were spawned. Some are heading for the lower rivers below Bonneville dam, the Willamette, the Cowlitz, the Toutle and many others.

Downstream Columbia River hatcheries raise millions of fish and these will not go over the dams into the Indian nets, but will return to their native water.

Yet the Federal Judges have ruled that the treaty Indians are entitled to 50 percent of the fish still in the Pacific Ocean.

How in the world can anyone tell how many salmon and steelhead caught by offshore trollers, charter boat operators and private sports boats were destined to go over Bonneville Dam? Again I say it is impossible for anyone to arrive at an accurate figure, even the most able biologists. It is a directive that cannot be implemented.

The section of Judge Boldt and Belloni's ruling that the non-Indian fishermen cannot understand is how he arrived at the 50 percent figure. "Fishing in common with" the wording in the treaty does not mention a particular percentage. Rather, I believe that one could take it to mean that every citizen's share should be equal.

Still looking at it in this light, whereas the treaty Indian population of the Northwest represents less than 1 percent of the total citizenry, they should be entitled to one percent of the fish caught.

Or, if you compare the number of Indians who do the actual fishing with the licensed sportsmen and commercial fishermen, I believe that the percentage would be even less.

Of course, this figure is unrealistic, but somehow the 50 percent share must be reduced to a reasonable and acceptable amount.

As you know, Indian problems are springing up all over the country. Here on the west coast, the Klamath Indians, who were well paid for their land by the Federal Government, now claim exclusive fishing and hunting rights on their reservation, and have defied the Department of Fish and Wildlife attempts to regulate and manage the fish and game population.

Just recently a California tribe declared arbitrarily that the Klamath River Indian lands were off-limits to non-Indian users, and ordered them off the land at the mouth of the river.

They planned to declare an exclusive Indian fishery on the entire length of this famous fishing stream.

Where is it all going to end? We feel that drastic congressional action is necessary to stop this movement before it engulfs us.

I'm sure that you are aware that this takeover is spreading all over the country, not only in fishing and hunting but also in timber rights, water rights and mineral rights.

Sportsmen who pay for the largest share for propagating in the management of fish through their purchase of licenses and tags in addition to the Federal tax on fishing equipment are becoming more disenchanted with these developments.

If they refused to buy licenses, and many whom I have talked to are considering it, who then will pay for the rearing and administration of the fishery?

Not the Indians; They don't buy licenses. They don't pay poundage fees. They have a free ride at other's expense.

I trust that this Commission will return to Washington with a much better knowledge of the severity and the crisis after review of the testimony today and will request immediate action by the Congress to remedy this deplorable situation.

Thank you.

RANNY RANCOURT.

Chairman ABOUREZK. Mr. Forrest Meuret.

## STATEMENT OF FORREST MEURET, VICE PRESIDENT, SAVE OREGON'S RESOURCES TODAY (SORT)

Mr. MEURET. Mr. Chairman, Senator Hatfield, I would first like to say that I have lived, been neighbors to, and have children who have gone to the same school with the Indians of the Warm Springs area for 30 years. I find them delightful people, and I have been friends with many of them.

The man who is now the general manager of that Federation kept books for me for a length of time. I am fairly well acquainted.

I find myself sitting on the bank and watching those people fish. The water has been closed for conservation reasons and they are fishing under the court order that they may fish at all times. And they are catching much, much, much more fish than they can possibly eat. I know that it is being sold. I find it pretty hard to call that fishing in common will. I just can't stomach it.

I find myself a little amazed at myself for some of the things I can think about those people for doing that. This is one of the ways this animosity gets where it is. What we really need is just a factual interpretation of that treaty.

We keep talking about a fictitious rerun. Maybe we ought to read the pertinent part of the treaty. The piece of paper I sent up there a little while ago has it right in the middle of the first page, and Judge Boldt's decision amounts to about seven or eight pages for every word of that.

I will read:

> Provided, also that the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians; and at all other usual and accustomed stations, in common with citizens of these United States, and of erecting suitable houses for curing the same * * *

That is all it says about fishing.

Then it says:

> Also the privilege of hunting, gathering roots and berries, and pasturing their stock on unclaimed lands, in common with citizens, is secured to them * * *

And that is it. That is the only mention of hunting and fishing in the entire treaty.

The Judge wrote 203 pages, and the court is insisting that the non-Indian fishing regulatory agencies come up with a comprehensive plan. The court has been insisting that they come up with a comprehensive plan to guarantee the Indians 50 percent.

The Indians have been invited to come up with that plan too, and they can't do it either.

And the reason they can't do it is because it is just biologically impossible.

For example, the Indian fishery is almost exclusively steelhead and upper river Columbia River Chinook, the fish originating above their fishing grounds.

Now we are putting something over 6 million, and soon to be 8 million, a year below that. Now, I don't agree with that; I am saying very plainly that part of that fish of that capacity should have been above for the Indians and benefit the Indians.

It will be very clear, and I will prove that.

The business of guaranteeing 50 percent of those fish are returned to the Indians, is impossible because they are intermingled with so many other fish and sought by so many fishermen beyond the scope of the court. If there was a reasonable way of doing that, it would have been done already. The judge didn't interpret the treaty; he rewrote it.

Chairman Abourezk. Apparently, you are saying, Mr. Meuret, that the judge was wrong in his decision.

Mr. Meuret. I don't know whether it would be proper for me to be completely frank about what I think about that or not.

Chairman Abourezk. Well, go ahead and we will delete the expletives out of the record

Mr. Meuret. There are sportsmen who believe the judge was afflicted with both senility and egomania.

Chairman Abourezk. Are you a lawyer?

Mr. Meuret. No; I am not. I am an old blacksmith, sir.

Chairman Abourezk. You have obviously entered into contracts with other people on different business transactions.

Mr. Meuret. Right. I don't ever recall one of them as being ridiculously interpreted as this.

Chairman Abourezk. Are you familiar with the term that is used in drawing contracts or agreements, the term "in common with" somebody else. Do you know what that means?

Mr. Meuret. Yes, sir.

Chairman Abourezk. What does it mean to you?

Mr. Meuret. Well, it means equal rights, equal privileges.

Chairman Abourezk. Then you have interpreted it the same way as Judge Boldt did. In all seriousness, that is exactly what Judge Boldt did.

Mr. Meuret. No, no.

Chairman **Abourezk**. The reason that both you and Judge Boldt interpreted it that way is because that is the commonly understood meaning of that phrase, "in common."

Presumably it was put in the treaty by virtue of the agreement with both sides that when you say "in common," everybody knows what it means; you don't really have to be a lawyer to understand that.

It means that it is going to be equal to both sides, equal to everybody else.

If you have a quarter section of land distributed in common between two people, or five people or whatever, that means that each one has an equal share. Equal rights is the word that you used and that is a very accurate word.

Now, if the two parties to the treaty sat down and understood what that term meant, then I don't think 100 years later you can change the meaning of that term. It seems to me that the judge interpreted it in terms of what the parties meant at the time, just as you have interpreted it the same way.

So I don't know what else to say on the issue.

Mr. **Meuret**. Mr. Chairman, "in common with," to me means equal privileges for all individuals, not all groups of individuals, regardless of their size and numbers.

Chairman **Abourezk**. Who was the treaty made with, individual Indians or the tribe?

Mr. **Meuret**. Beyond a doubt, it was the tribe.

But I bear in mind, that, as has already been said, not only have the times changed but the resources have changed. Nobody contemplated, I don't think, at that time that something over 200 million to 250 million people would be in the United States at this time—and 500 million assumed to come, they tell us.

Chairman **Abourezk**. I agree with you there. I don't think anybody, of course, saw the expansion of the population that we have had and on the same terms. I don't think anybody foresaw the conditions the Indian tribes would be in today 100 years ago, either.

I don't think anybody could have looked into their crystal ball and have predicted the things that would happen to the Indians over the next 100 years.

It is a matter of equity on both sides.

As I have said before to these other witnesses: Both sides have a good point of view. You can't deny that.

I understand that you want to express your point of view as forcibly as you can, but I also think that it is incumbent upon the Congress to be fair in this matter. I would hope it is incumbent upon the leaders on both sides to be fair as well—even though you have a strong point of view on your own side.

Mr. **Meuret**. I will repeat what has been said otherwise here: The mechanics of the thing are impossible. In the first place, we just don't have jurisdiction over those fish throughout all of their sojourn in the ocean and we cannot deliver.

All chinook range northward in the Pacific Ocean, all the way from San Francisco up into Alaska.

All of those fish, as they go out of their river, turn north. This means that very few Oregon citizens catch very few of the Columbia River chinook—in fact, about 4 percent.

Now, this figure may vary with some reports I have seen. It varies from less than 2 percent up to 6 percent. I don't want to get bogged down in an argument about how much it is. Four percent appears to be a good figure.

And the other chinook caught by Oregonians, at least of Tillamook Head, demarcation is due to the influence of the mouth of the Columbia, from rivers south of that fork, and both commercial and sportsmen feel that only about 25 percent are chinook. What this really means is when we consider all the other fish, that when our season was short off of Tillamook Head, and other restrictions put upon us, in order to return one fish to the Indian fishery above Bonneville dam, we actually had to cut back about 50. This is a little bit beyond the point of return.

This is why nobody has come up with a satisfactory plan. We have got to find another way to approach this problem.

That won't work.

Chairman ABOUREZK. I agree, I agree.

Mr. MEURET. One other thing I would like to say is that I am happy to hear that our Senator approves of our selection of a director for our department of fish and wildlife. I believe that I was one of the first one or two or three to ask him to apply for that position.

There is one thing, however, that is certainly disappointing to me. They wanted him in that position because of his eminence as a biologist. He is being compelled to spend most of his time in court, and if he is an attorney, he hasn't told me that.

Chairman ABOUREZK. Well, that is a hazard of a democracy.

Mr. MEURET. We are losing these things that made him desirable for that position. We surely ought to settle it some other way.

Chairman ABOUREZK. Thank you very much, Mr. Meuret.

Your prepared statement will appear at this point in the record.

Mr. MEURET. Thank you, Mr. Chairman.

[The prepared statement of Mr. Meuret follows:]

### PREPARED STATEMENT OF FORREST L. MEURET, VICE PRESIDENT AND LEGISLATIVE DIRECTOR OF SAVE OREGON'S RESOURCES TODAY (SORT)

Gentlemen: After further thought about the September 25 hearing in Portland, I wish to express appreciation that we finally had some kind of a hearing in Oregon, but at the same time it should be pointed out that it was to be a public hearing to hear local opinions and concerns. Most of those present, numbers of whom had traveled considerable distance were not heard, because those conducting the hearing took too much time vainly trying to sell their prejudiced point of view.

I know it is fashionable in the District of Columbia to do nothing to upset the bureaucracy that is the BIA, but if you will pardon me, you remind me of my bachelor uncle, whom my mother always said "knew more about raising children than those that had them." One of the guys "that has them" and was not heard, was Larry LaRue of The Dalles. I suggest you study his written testimony, and also the enclosed editorial.

The idea of a committee, or commission, to study problems of the Columbia is a good one, except for one concern. Is this to be a hand-picked group as carefully selected for a one-sided review as the Review Commission? Other people are interested in these matters besides Indians. Whatever happened to the "one man, one vote"? It should not be forgotten that sportsmen outnumber all other groups by more than one hundred to one.

You urge that we talk with the Indians. I have, and the conversation always begins by their saying, "Now that everybody knows the Boldt Decision is the law of the land, let us consider ways of implementing it," which is not exactly what I want to talk about, and which I refuse to accept as final.

Neither do I accept the statement that all courts agree. All Washington State Courts, including their Supreme Court, are unanimously 180 degrees from Boldt, and would be further, if that were possible.

Although unequal fishing, hunting, and other rights can strain any friendship, I have regarded myself as friend of Indians for years. I vigorously supported improvement in their lot when they were on the short end of the stick, but believe me, they are not on the short end now! I am not willing that either the Indian or myself be relegated to second class citizenship, such as is now my lot.

If I, or the Indian, or you, wish to degrade himself by intemperance, or by dropping out of school, that should be his business.

This modern idea that we must lay the blame on someone else is nonproductive. So's the idea that appropriations, or extra rights, will cure alcoholism or unemployment when those things are a matter of personal choice.

If the Indian has a problem that can be easily pointed out, it is probably their timid nature, especially in the young. So we strike awe in the hearts of 32 native children of the frozen North by building them a $1.5 million school, when they would be better in buildings of a more familiar type.

We also spend five times the normal figure for a school for 500 Indian students to be segregated and educated in the ways of the BIA in Salem.

Just what is the urgent rush to do all these things, also, to the Siletz?

APRIL 12, 1976

Dear Senator Hatfield: My previous testimony was my first major attempt to influence national legislation. The experience was more than a little disillusioning. I came away feeling that I had been playing with a "marked" deck. With the exception of Oregon Assistant Attorney General Beverly Hall, national President of Trout Unlimited, Bill Luch, and myself, plus the recorder, reports, etc., the room was filled with Siletz supporters. Even your legislative counsel was Indian.

I had previously attended a hearing of the All Indian Task Force 10 of the American Indian Policy Review Commission, which accepted only Indian testimony.

Exactly half of Oregon's delegation to Congress has told me at one time or another that they were waiting for a report from that Commission before taking a position on the superior, and discriminatory, Indian hunting and fishing rights now in vogue. And then you must have spent nearly half an hour trying to convince the nimble-witted, informed and tenacious Mrs. Hall that S. 2801 is a neutral bill so far as hunting and fishing rights are concerned.

It appears that you either have not done your homework on the bill, or were ignoring the fact that the bill could result in small and separated tracts being designated as reservations, and such tracts could, if they border a stream or streams, result in gillnets in those bordering waters.

In addition to that, the usurping of both treaty making and legislative powers by the Federal courts making anything possible. You also commented that to bring the hearings to Oregon would only result in their being bogged down in hunting and fishing rights discussions.

Sportsmen wish to respectfully point out that S. 2801 is very much a hunting and fishing rights bill, and should be discussed as such. As long as the possibility exists that the legislation could give substantially more than half of the fish and wildlife resources in an undetermined portion of the State to one percent of the State's citizenry, and as long as that can only be done by taking those resources from the other 99 percent, you should not be surprised that the 99 percent wish to express their opinions. Let's hear it in Oregon, and stop making it a private party for one side of the question.

Apparently we are supposed to take the word of the Siletz that they are not interested in fishing rights, but I call your attention to the testimony of Mr. Adams, an Indian, of the Survival American Indian Association. He told of Siletz tribal members attempting to gain admission to certain Washington treaty tribes and being refused because of their terminated status. Obviously, these people want to fish. If not, why do they object to the McKean amendment, which only spells out equal rights to fish and game.

When either the Congress or the Courts have addressed the hunting and fishing rights question to our satisfaction, then sportsmen, as such, will get out, and stay out, of Indian affairs. We have no reason or desire to oppose other benefits sought by the Siletz.

### SEPTEMBER 24, 1976

Mr. Chairman: I am a volunteer, registered lobbyist before the Oregon legislature, working at my own expense for Oregon sportsmen and conservationists. I also testified at a hearing on S. 2801, the Siletz Restoration Bill, March 31, last, before the Indian Affairs Subcommittee of the Insular and Interior Affairs Committee of the United States Senate, in Washington, D.C., insisting that the McKean amendment be added to that bill to make hunting and fishing equal for all. Today I am speaking for myself, and those sportsmen whose views I share.

My concern is the utter chaos and shambles that are befalling some of our living resources in this northwestern part of our country because a Federal judge rewrote some Indian treaties.

I say "rewrote" because the ruling took the form of 203 pages of language, most of which was not remotely hinted at in the treaty. The pertinent part of a typical treaty is reproduced below:

"Fishing and Hunting Provisions of Treaty of the Tribes of Middle Oregon, 1855

"* * * and upon which the Board of Commissioners thus selected may agree, the same shall be declared a reservation for said Indians, instead of the tract named in this treaty [provided, also, That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians; and at all other usual and accustomed stations, in common with citizens of the United States, and of erecting suitable houses for curing the same; also the privilege of hunting, gathering roots and berries, and pasturing their stock on unclaimed lands, in common with citizens, is secured to them] And provided, also, that if any band or bands of Indians, residing in and claiming any portion or portions of the country in this Article, shall not accede to the terms of this treaty, then the bands becoming parties hereunto agree to receive such part of the several and other pay * * *."

Judge Boldt rewrote the treaty. He reinterpreted the words "in common with" to mean that off-reservation fishing by Indians could not be regulated by the States, that the Indian could fish at all times for ceremonial and subsistence purposes and must be guaranteed an opportunity to catch 50 percent of the harvestable remainder destined for their usual and accustomed (off-reservation) stations.

He left no machinery for stopping the Indian at 50 percent, leaving no guarantee for anyone else.

This interpretation does nothing for the rank and file Indian. Only about one Indian in 30 fishes. If we consider the total number of Indians in the States of Idaho, Oregon, and Washington, and the total number of other citizens, the judge has said that the Indian is entitled to more than 150 fish to 1 for the non-Indians, but if we consider only the fishermen, the Indian fisherman is given about 1,300 fish to 1 for the non-Indian fishermen. Sportsmen are finding it hard to believe that guaranteeing the Indians 1,300 fish, in the applicable areas, and not guaranteeing the sportsman his 1, is really fishing "in common with" or is what the treaty intended. Neither do we feel that we are fishing in common with when the entire Columbia and many of the larger tributaries are closed to us for conservation reasons, but the Indian continues to take large quantities of fish for sale, merely by stating that he is fishing for subsistence. We are especially disturbed when the fish he continues to take, despite the closure, are desperately needed for spawning.

Sportsmen are also disturbed that the continued propaganda barrage depicting the Indian as a conservationist capable of regulating himself. Those educated, personable and eloquent Indian spokesmen who represent their tribes in public are undoubtedly conservationists, but the Indian fishermen on the banks of the river are not. They will take the last fish. Tribal regulations are not enforced, and so far, appear to be mostly window dressings. Extinction is forever even when accomplished by an Indian fisherman.

State regulation and equal hunting and fishing must be spelled out in any Indian legislation. Actually, sportsmen and Indians have many views in common. I personally have worked long and hard for a greater emphasis on the middle and upper Columbia which would benefit the Indian fishery as well as my own.

We differ mainly in two areas. First, we see Indians taking fish needed for spawning, which should not be taken, and fish that come from hatcheries paid for by sportsmen, who finance substantially more than half of Oregon's fishery budget and take less than one-fourth of the fish.

Second, we regard the Boldt decision as a product of the Department of the Interior and a Federal judge, neither of whom had any idea of what they were doing. The Indian does not want to go where the fish are, but wants them delivered to his address, which is in the mid-Columbia area, so far as the Columbia system is concerned.

His harvest is almost exclusively fall chinook of upper river origin. These fish intermingle with 75 million or so fish planted below the Indian fishing ground, and therefore not destined for the Indian's usual and accustomed stations.

The upper and lower river fish are not separable in the ocean. The fact is that chinook range northward from the mouth of their parent river and more than half of those originating in the Columbia are taken by Canadian fishermen, and 10 percent by Alaskan fishermen, some by foreign fishermen other than Canadians, 12 percent off Washington, and only 4 percent by Oregonians.

Oregon sports and commercial troll fishery has been cut back to help guarantee the Indian an opportunity to catch 50 percent of those fish destined for his usual and accustomed grounds. The off-shore Oregon catch is 75 percent coho and 25 percent chinook, most of the chinook coming from rivers south of the Columbia.

The fact is that the Oregon offshore fishermen must give up something between 50 and 100 fish in order to deliver 1 to the Indian in the mid-Columbia. To add insult to injury, the Indian does not constantly monitor his nets and does not use ice, allowing the fish to deteriorate so that he gets only a fraction of the price commanded by offshore caught fish. In fact, the Indian fish are sometimes actually unsalable at any price, and wind up rotting in the sagebrush or on a dump.

When the judicial process dictates that the ultimate consumer must buy her fish directly, or indirectly, from fishermen that do not preserve the catch in the best possible condition, something is pretty badly amiss.

As to respect for the resource as claimed by Indians, I know of specific instances where Indians are taking fish from small spawning streams that are remnants of former great runs and should be preserved. On a larger scale, the "B" run steelhead, bound for Idaho and the largest steelhead hatchery in the world, the Dworshak hatchery, entered the Clearwater in Idaho 15,000 strong, as late as 1973.

In 1976, only 1,857 arrived at the hatchery. The States of Oregon, Washington, and Idaho had protected the run from all fishing except by the Indians, who reported harvesting 5,520 of that run. Had they also refrained, natural mortality would have made the arrival of the 5,000 needed for spawning at the Dworshak doubtful. These people just don't seem to understand what they are doing.

The State of Washington now has 27 separate and independent tribes that the State may not regulate. In some cases several of these fish under their own rules in the same water. The fishery resource is such a complex, and rapidly changing problem that the capability of the State, even, is taxed to keep abreast of it. Twenty-seven separate entities, intent only on catching fish, just cannot meet regulatory responsibilities. They actually took up 96 percent of the run from the Washington streams.

The Congress must do something before more of these runs disappear. Sportsmen could live with the treat as it was written, but not as rewritten by Judge Boldt.

It is very dismaying to note that most agencies dealing in matters of interest to Indians are staffed by Indians as though no one else had any interest therein. Please be reminded that the Indian is a very, very small minority. In few States is he as much as 1 percent of the population. When speaking, as does Judge Boldt, of giving the Indian substantially more than half of a limited resource, which can only come from the share of the rest of the population, then the other 99 plus percent is also interested and should be represented.

It is indeed frustrating to have Oregon Congressmen speaking against the interests of their constituency, and telling us, for example, that S. 2801 will not do what it so patently will.

Included: Information previously provided various other agencies and individuals, which may be of interest to the Commission.

JULY 17, 1976

I serve the two leading organizations concerned with sports fishing as a Vice President and Legislative Spokesman of each. The Northwest Steelheaders, dedicated to the enhancement of all cold water fishery, is primarily oriented toward reporting, and educational efforts and fishery improvement projects.

Save Oregon's Resources Today (SORT) is an umbrella committee whose directorship is made up of the leaders of the leading conservation organizations in the state, and is the political arm of the sportsmen of Oregon.

I am registered as a volunteer and unpaid lobbyist before the Oregon legislature. We hope that this overview by a layman of the fishery problems is of interest.

A chapter could be written on any aspect of the problem.

Further questions by interested persons will receive attention, and will be appreciated. The final section of this writing contains specific recommendations.

Anadromous fish are those that originate in fresh water, and migrate to the ocean where most of their growth takes place, and then find their way to their point of origin again to spawn and renew the cycle.

Before Grand Coulee and the Snake River dams cut them off, some travelled more than 1,000 miles upstream to spawn. This writing concerns mainly the salmonids more frequently sought and fought over by man.

Of special interest to sportsmen are steelhead trout, chinook salmon, coho salmon, and cutthroat, or harvest, trout.

Some of these fish return to fresh water to spawn near the end of their second year, but the chinook return may vary from 3 to 7 years of age.

Both the cutthroat and steelhead return at varying ages, and, unlike any of the Pacific salmon, may return and spawn more than once.

The larger of these fish range the entire eastern and northern Pacific, cruising at a rate of about 30 miles per day. Their routes and reasons are not fully understood, but we do know that a large part of them are being intercepted by fishermen of other nations that do not contribute to their production.

Now that problems in the rivers to which these fish are native, and increasing pressure by both domestic and foreign harvesters, have reduced many of the runs to or near extinction, State and Federal agencies are seriously expanding their research, which may make what is being written here outdated before the signature can be affixed.

This is nontechnical, with few, if any, Latin words, because the old blacksmith doing the writing knows very few indeed. Statistics will be presented as comparisons and percentages, to make them meaningful to the layman.

Those traveling the Pacific Northwest in the covered wagon days, at certain times of the year had to beat the water with branches to frighten away the fish before their horses could ford the streams.

Early homesteaders loaded fish into wagons with pitchforks and used them for hogfeed. The number of fish in the rivers at that time is uncalculable and would be incomprehensible.

Numerous early explorers and settlers described the runs in essentially the same words, "It looked as though you could walk across the river on their backs." This was even said of the Columbia, and that would take a lot of fish.

It must be remembered that most anadromous fish eat little, if at all, from the time they reenter fresh water until they spawn and die.

The abundance of fish described by Lewis and Clark, and others, would not have been possible except that they went to sea when they were mostly 3 to 7 inches long, and returned up to 4 feet long, carrying enough body fat to get them to their destination.

Such large numbers could not possibly have sustained themselves otherwise. More than 95 percent of the growth of these fish occurred in the spacious pastures of the great Pacific, and their decaying bodies added to the food supply of the next generation.

Fish canning became a practical reality, mostly in the second half of the last century. All of the runs in all of the small coastal streams were decimated, one stream at a time, by the greed of the commercial fishermen and packers. They failed to allow adequate escapement for spawning, and merely moved onto the next stream when the runs disappeared.

Finally, only the Columbia was left. Denuding that mighty river of fish took awhile and a little more doing. Men still living participated in the operation of nets in that river with horses, removing tons of fish at a time. Nets of all kinds and continuously operating wheels and tracks, helped with the depletion. Before the first dams were completed in the Columbia in the late thirties, the once great fishery resource had hit a new low and was only a fraction of its former abundance. But new blows were to come and keep coming and coming.

The next blow was Grand Coulee dam, designed and built without a fish ladder. Bonneville, at the head of tidewater, completed in 1938, had a ladder included at the last minute at the insistence of commercial fishing interests, Indian spokesmen, and sportsmen, though the latter had no such effective voice as they have now.

Decisions to build dam after dam were made in the East by the people, who, if they kney salmon existed, thought them no consequence.

All that part of the Columbia and tributaries above Grand Coulee, which originates in Montana, makes a big loop out through British Columbia, and back into Washington, had been lost as spawning area by the single act of building Grand Coulee dam.

The Idaho Power Co., with predominantly eastern stockholders built dams in the Snake, in the upper Hell's Canyon area. They did not provide adequately for fish passage, and deliberately bulldozed under unbelievable masses of fish until no more returned, eliminating all the drainage of those dams as spawning and rearing areas.

The Salmon River drainage, and part of the Clearwater remain as tributaries of the Snake, in Idaho, but fish must pass eight Federal dams in the Snake and Columbia in their migration to and from the ocean.

In 1973, a low water year with special problems, those dams were credited with killing 95 percent of the downstream juvenile migrant fish.

In the best of years the loss is intolerably high.

After years of study, we still do not know all the ways and reasons for the upset in fish migration patterns where their stream is impounded by dams.

Both the juveniles bound downriver and adults headed up lose their sense of direction and timing in impounded water. They are strictly cold water fish, and impounded water warms up, favoring disease and predators, as well as increasing the time of exposure.

The Idaho Department of Fish and Game says that 57 percent of those few adults making it up past the last dam are so weakened that they fail to spawn.

Aside from direct physical damage by turbines, and nitrogen bubble disease, caused by the dams, increased temperatures, predations, and delayed travel patterns caused by impounded water, on the downstream migrants, the adult movement upstream is also upset.

Fish making it up over the dam are disoriented by lack of current in the impoundment and mill around aimlessly. Each stage of their movement upstream is signaled by the odor of seasonal vegetative or other changes from their home streams. The series of impoundments, at best, delay these signals to the fish, perhaps fatally, or dissipate them altogether, causing more aimless milling, often too late to complete their migration, which may be critically timed with the season, or with the high water flow that failed to alert the fish, because it was impounded behind as many as eight dams.

No small part of the problem has been control of local politics at the State level in Oregon, Washington, and California by commercial fishing and packing interests. Those people virtually wrote the laws pertinent to their interests in the Oregon legislature up until the 1973 session, at which time the forces of sportsmen and other conservationists began to prevail.

Oregon previously had the Fish Commission of Oregon, charged by law with promoting the interest of the commercial fishery, and the Fish and Wildlife Commission, dealing with sports hunting and fishing. The two were merged, forming the Department of Fish and Wildlife effective July 1, 1975.

For the first time, Oregon had all of its fishery resource under one conservation-minded, very conscientious seven-member commission.

It is a new day in Oregon, but Washington and California still have to take the step.

Washington's commercial fishermen have been more or less successful in defying needed regulations by the director of their Department of Fisheries, who is thus spending too much of his time in court.

## Allocation, The Boldt Decision and Indian Fishing

The highly prized chinook salmon is a particularly hot bone of contention, more so because of its enormous range and mobility. This fish ranges mostly northward from its parent stream, although the Columbia is the dominant source of chinook, they do enter the Pacific from streams all the way from the San Francisco Bay to Alaska. All strains of all chinook all these streams, and many other kinds of anadromous fish, mill about the eastern and northern Pacific in confused abandon, or at least what's left of them still do.

As each of these fish near their spawning time, their keen homing instinct, most likely their sense of smell, guides them back to the immediate area where they emerged from the egg. Only a few actually make their way back. Natural mortality from predation and disease is devastating.

As they reach harvestable age and size, they are set upon by the fishermen of four coastal states and Canada, plus a conglomeration of European and Asiatic fishing fleets beyond the 12-mile limit. The Japanese use some nets long enough to go all the way around a small city.

Those chinook bound for the Columbia drainage system originate in Oregon, Washington, and Idaho, but are not home free just by making it to the Columbia, which very few actually do, but face both non-Indian and Indian commercial fishermen and their gillnets, in the main stem of that river and some of its tributaries.

Sportsmen take a lesser number. The non-Indian netters are confined to the 140 miles of the main stem below Bonneville dam, which is at the head of tidewater.

They drift their gillnets, when allowed in open season, and monitor them constantly, and do deliver to the buyers a highly marketable product. The nets drift downstream at different depths and meet the firsh coming upstream. There have been as many as 800 such nets, up to 1,500 feet in length, in the 140 miles of river in which they operate. These nets are indiscriminate and take all the fish large enough to entangle their gills in the mesh, including some highly endangered runs heading for the tributaries in Idaho.

As the fish pass Bonneville, they suffer a mortality due to the dam of about 20 percent and pass into the Treaty Indian fishing area. The Indians use the same type of nets except they are limited to 300 feet in length, and are anchored in one place and are called set nets.

As the fish proceed upriver, various segments of the runs branch off into their home tributaries, or to hatcheries where many have been artificially propagated and are not destined for the Indian fishing areas, even if unmolested.

The hatchery program has been concentrated almost wholly in the lower river (below Bonneville) even when funding for the hatcheries was in the form of mitigation for losses caused by dams further upstream. This has reduced both the Indian and sports fishery in the mid and upper river areas, and apparently was done by the lower river commercial interests who dominated the decisions and who have said, "we should forget the Columbia above Bonneville."

The Indian fishermen do not monitor their nets constantly, and since their fishery is in large open impoundments in the windy Columbia Gorge, they sometimes cannot reach them at all. Because their fish are left in the nets too long, some are lost to spoilage and most are reduced in value, bringing as little as one-fourth the price of first class fish.

Quality fish can only result from immediate dressing and icing as soon as caught, but the Indian apparently has no desire to fish by means requiring constant attention.

The treaties of all of the northwestern tribes with a fishing clause are very similar, one of which is herewith quoted. In the midst of a long paragraph dealing with the selection of a reservation area, the first and last mention of fishing or hunting follows: "Provided, also, that the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians; and that all other usual and accustomed stations, in common with citizens of the United States and of erecting suitable houses for curing the same; also the privilege of hunting, gathering roots and berries, and pasturing their stock on unclaimed lands, in common with citizens, is secured to them."

A Federal Judge has written 203 pages interpreting the above, much of it hinging on the words "in common with."

First, he gave the Indian, as granted in the treaty, exclusive rights on the reservation. Then he granted them off-reservation subsistence and ceremonial fishing at all times. Then he said the State may not regulate off-reservation fishing by Indians. Then he said that the state must guarantee the Indians the opportunity to catch 50 percent of the harvestable remainder of fish destined for their usual and accustomed stations, including those caught off Oregon and Washington in the ocean.

He said that Indians had a right to fish and others only a privilege, and left no machinery to halt the Indian harvest at 50 percent, no guarantee that anyone else could have any. This is his version of "in common with."

Indians represent about one percent of the population of Washington, and about one-half of 1 percent of Oregon. Washington records 1,237 Indian fishermen, and Oregon 291. Idaho has no commercial fishermen, Indian or non-Indian.

The three States, therefore, have together only about 1,500 Indian fishermen, they have about 10 times as many non-Indian commercial fishermen, and about 2 million sports fishermen.

What the Federal court has really said is that as far as the "in common" areas are concerned, the Indian is entitled to about 1,300 fish to one for each non-Indian.

The non-Indian can hardly be expected to subscribe to this point of view, or to believe that the Court realistically interpreted the words "in common with."

Sportsmen are especially bitter about this since the absence of State authority has resulted in the Indians taking fish needed for spawning, and which were produced in hatcheries funded by sportsmen's license fees and excise taxes on sporting goods.

Steelhead are game fish in all States and are protected from commercial sale except that the Court allows sale by Indians. The Court allows so-called subsistence fishing by Indians at all times.

In 1975 they reported subsistence catches of steelhead by Washington Indians totaling 7½ pounds for every day in the year for every Indian in the State. Funding of the hatcheries that produced the fish is by sportsmen, who must continue to do so or see the resource go down the drain.

The late summer "B" run of steelhead to Idaho predominantly comes from and returns to Dworshak hatchery in that State, the largest steelhead hatchery in the world, requiring 5,000 spawners for full operation.

As many as 15,000 fish returned to Idaho sportsmen and the hatchery as late as 1973. This past spring, the number was 1,856. Only the Indians were allowed to fish that run, and they report taking 5,520 from their mid-Columbia fishing area.

Had they not taken any, natural mortality would have made the desired 5,000 at Dworshak doubtful. Those people just don't seem to understand what they are doing.

Idaho's fishery program is financed by sports licenses plus the usual small return from Federal sporting goods excise taxes. In this year of increasing costs, their revenue is down more than $1 million, or 18 percent, because frustrated anglers are not buying licenses. Although they are still struggling to rebuild their runs, anadromous fishing is forbidden in Idaho. That States resolve to continue their efforts is wearing thin. Sparsely populated Idaho cannot continue to subsidize other users.

Offshore trollers of Oregon and Washington have their frustrations, too. They have been told that they must allow enough fish to pass to give the Indian fishermen the opportunity to harvest their 50 percent over and above the reservation and subsistence fishing. It is impossible for the troller, or his regulating agency, or even a Federal judge to dictate what will happen to such fish as the troller passes up, or even to determine that the fish he takes, or does not take, is destined for any particular river or Indian fishing area.

What he can determine is that Canadian fishermen are already taking 40 percent of the pie, and will be only too happy to pick up half or more of what the domestic troller passes up for the Indian. The troller also knows that the Indian will get only a fraction as much for such fish as do reach the Indian fishing grounds as the troller would have gotten.

The enormous propaganda and legal barrage that empire building BIA and the Department of the Interior would picture the Indian as an abused and romantic conservationist. Most people do not have day to day observation of Indian practices and do not know that they are not and never have been conservationists. It is the history of the Indian that he depleted the game and moved on, and starved when he found none.

The rank and file Indian neglects and abuses his horse, his car, his own body, and the game and fishery resources to which he has access. He is better fed, housed, clothed and educated, and has better medical care, than at any time in history, and at public expense. There is no need to force sportsmen to subsidize his subsistence fishery. He lacks no opportunity available to anyone else, except for those shortcomings within himself, and those cannot be legislated, appropriated, or adjudicated.

In fact, he would be more independent if he were not handed so much. The area of the United States supports nearly a thousand times as many people as it did before the coming of the white man, and still exports more food than any other nation. Indian absorbtion into the mainstream of society is not encouraged by isolation and reservation.

The Washington Attorney General's office stated flatly that the Interior Department has spent more pursuing and implementing the court case known as the Boldt decision than the Indian fishery is worth. It is so alien to American thinking that anyone should be legislated, or adjudicated, a special advantage of that magnitude, based solely on race or national origin, that sportsmen expect our national sanity to return so that all fish and hunt under the same rules.

The states of Oregon and Washington, with Federal mitigation assistance, have been planting more than 61 million fall chinook annually in the lower Columbia and tributaries below the lowest dam. Only 0.13 percent, or 80,900 of those were harvested by gillnetters upon their return. That is one return for each 754 fish released.

Of all the fish originating in the Columbia system that are harvested, Idaho gets none, Oregon, about 4 percent (most chinook caught by Oregonians come from rivers south of the Columbia) and Washington takes about 12 percent; 40 percent goes to Canadians, and less than 10 percent to Alaskan fishermen. Exactly what goes to foreign fishermen other than Canadian is difficult to determine.

## CONCLUSIONS

(A) The appropriation about to come before the Congress to mitigate for fishery losses caused by Federal dams by building hatcheries in the lower Snake tributary area is a must. The figure involved would be approximately $50 million.

Hatchery production has been concentrated below the dams. Expansions recently completed there will increase that capacity to near 80 million lower Columbia fall chinook. By over saturating the lower Columbia with so large a release, without a similar increase in the runs, especially spring and summer chinook, from the upper tributary area, we are signing the death warrant for those upper runs. The enormous release from the lower river mingled with the others in the ocean and encourages such a frenzied orgy in pursuit thereof, especially by non-contributing foreign fishermen, that the returning upper runs are being reduced below the numbers necessary for survival.

(B) We must enter into more aggressive negotiations to make anadromous fish the property of the country of origin.

At the present time, Idaho gets absolutely nothing in return for her efforts to maintain the Columbia system runs. Oregon does not get back enough to justify current expenditures for Columbia chinook. Because the fish cruise northward from their parent river, while Washington enjoys a harvest of about 12 percent of the chinook from that river, but should get more. It is pretty hard to pay the bills, with some non-contributing hijacker skimming the cream somewhere out in the ocean. Our State Department needs a little starch in the spine. What will encourage anyone to plant fish if they can't get the return?

(C) We need to pay a great deal more attention to rehabilitating those natural spawning areas, the little mountain streams, that once supplied an unbelievable abundance.

Many of those little streams, still not cut off by impassable dams, are as highly void of fish because of siltation caused by overgrazing, careless logging, or other competing uses.

Grazing production would also be increased if it were properly managed. Just removing the shade from these streams eliminates spawning by cold water fish. Rehabilitation is cheaper and better than hatcheries, even though it must be supplemented by hatcheries.

(D) Total regulation of the fishery must be returned to the States and the Columbia River Compact, which must be expanded to give Idaho a vote in matters pertaining to the harvest of fish originating in that state. All must fish under the same rules.

Washington now has the intolerable situation of 27 separate Indian tribes claiming independence from State regulation. Oregon is about to get into the same mess. Congress must address this matter.

(E) We must have totally selective fishing, so that protected species and runs can be returned to the water unharmed, instead of being taken as incidental catch.

A protected run may be outnumbered as much as 1,000 to 1. The commercial gill netter has always considered the incidental elimination of the lesser run a reasonable trade off "to avoid waste." This practice tends to eliminate one run after another.

Sportsmen believe there is no waste like extinction of a run that could be rebuilt. The gillnet has other hazards. It skims the larger fish, and lets the undersized go through for breeding stock, if indeed, any at all get through. This is bad selective breeding practice. The gillnet, both Indian and non-Indian, must go.

(F) Sportsmen must have representation on planning and regulating bodies more commensurate with their numbers and their investment.

No group of commercial harvesters of any natural resource can be trusted to regulate themselves, especially a resource as perishable as the fishery.

Chinook, for example, return to fresh water from 3 to 7 years after their parent run. It is therefore long after the damage is done that they are missed.

The commercial fishermen want to set their season based on the past 5-year average. That is murder on a declining run.

Under management dominated by commercial men, the fishery continues to decline, as it has done since the art of canning fish became a factor. Sportsmen are conservationists and will turn that around.

(G) The very fine research being done by the National Marine Fisheries Service relative to solving fishery problems caused by dams must be continued and intensified.

The above-named agency is the one that told us as far back as 1969 that some of the runs would be down 90 percent within 3 years. They were much too late. In 1973, when sports representatives tried to get Washington and Oregon legislatures to take steps to protect the resource against the hazards forecast by NMFS, they were laughed out of the house by the commercially-oriented regulatory agencies who declared the runs to be in great shape.

As the only registered lobbyist (volunteer) for sportsmen before the Oregon legislature, this writer can find no satisfaction in being in the position to say "we told you so." I doubt that the NMFS can, either. They are, however, coming up with some answers. Those answers are a necessary part of our hope for the future.

(H) we must have limited entry for commercial fishermen.

A report by Oregon State University says that the average commercial salmon fisherman loses $100 per year. Many are vacationers or moonlighters from some other job, and should buy a sports license and abide by its terms.

At the same time our fish stocks are declining, the demand on the resource is increasing. With chinook currently bringing trollers $1.75 per pound at the docks, it will only continue to increase unless regulated. High prices result from less fish, which causes higher prices, ad infinitum, unto extinction.

Forrest L. Meuret, Vice President and Legislative Spokesman for SORT; Oregon Vice President of Northwest Steelheaders Council of Trout Unlimited.

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APRIL 28, 1976

Dear Candidate: SORT, the political arm of Oregon sportsmen, was organized to make it illegal to buy or sell steelhead. Having accomplished this by a very nearly two to one margin (1974 Ballot Measure 15) we have broadened our interests to include other environmental matters, especially the living resources of the State.

We would like you to know that Oregon has 5,176 licensed, resident commercial fishermen, and about 150 times that many, or more than three-quarters of a million, sport fishermen. That number usually exceeds the number of Oregonians actually voting at elections. Oregon's total fisheries budget for the 1976–77 biennium is $22,565,000; 54.8 percent of which, or $12,356,900 is expected from sportsmen licenses and excise taxes, and only 11.2 percent, or $2,533,000 is expected from commercial fishermen.

Total annual harvest is about 122 million pounds of all kinds of fish and shellfish from fresh and salt water.

Sportsmen take 26 million pounds, or 21.3 percent of this, and pay in tax and license fees 23.7 cents per pound.

Commercial take 96 million pounds, or 78.7 percent and pay only 1.3 cents per pound.

The National Marine Fisheries Service says that of all salmonids originating in the Columbia system that are caught, 31 percent are by sports and 69 percent by commercials.

Since sportsmen take most of the smaller cutthroat and steelhead, if the comparison were by weight, it would more nearly compare with the by-weight percentages above.

Annual license cost to qualify to fish for salmon and/or steelhead is $11, and while many holders of such licenses catch other fish, they average less than one salmon per license, making the license cost something over $1 per pound of salmon caught. It should not be too difficult for anyone who takes the trouble to examine these figures to understand why sportsmen feel they are paying for, and should receive, consideration second only to perpetuation in abundance.

The ability of our streams to produce large numbers of salmon and steelhead has been tragically reduced by other uses and abuses. The demand on the fishery resource is at the same time increasing. At the end of the 1976 5-day winter gillnet season on the lower Columbia, spring chinook were bringing $2.25 per pound to the commercial fisherman. Pressure on the resource can only increase in the face of that kind of prices, unless regulated by limited entry or otherwise. Higher prices are the result of less fish, which in turn results from higher prices ad infinitum unto extinction.

We don't know how much the new Federal 200-mile limit will help, but Canadians and other foreign fishermen are getting nearly half the chinook originating in the Columbia system.

Chinook range mostly northward from their parent river, and only about four percent of those from the Columbia are caught off Oregon. Most of the chinook taken off Oregon by both sport and commercial trollers are from other Oregon rivers, and do not further reduce those endangered upper Columbia tributary runs.

A minor, and decreasing part of the Columbia chinook are caught by Oregon non-Indians and Indiana gillnetters. The sport take in the river has been reduced to partically nothing. The Federal Government and the States of Oregon, Washington, and Idaho, all propagate chinook in the Columbia drainage, in addition to the remaining natural spawn.

Idaho's hatchery program is small. Washington budgets more than $1 million annually for the purpose, and Oregon expends more than $3 million to produce Columbia chinook.

Our $3 million plus is mostly used to produce fall chinook in the Bonneville area, presumably to enhance the catch of the gillnetter below Bonneville.

In recent years the Columbia chinook has been so hard hit by other users, that the cash-at-the-dock value of those returning to Oregonians has been less than the amount we put into the hatchery program.

We believe the former Fish Commission was "hatchery happy" so far as the lower Columbia was concerned.

It should be profitable to put more of our effort toward restoring spawning and rearing streams throughout Oregon, and toward research aimed at getting fish up and down past the many dams in the Columbia and the Snake.

Few people have any idea how much spawning gravel has been silted by overgrazing, careless logging and construction practices, or how much of it is rehabilitatable with a little care.

At one time every little creek contributed fish to the total, and many of them could again.

The problem is much more easily pointed out than the solution.

No one wants to give up on the Columbia chinook, but to continue to raise those fall chinook for other ocean fishermen, and to continue to release them at or below Bonneville so that they do not expose themselves to upper river and tributary fishermen of Oregon, seems to be a habit worth examining.

Recent completion of a seven million dollar hatchery expansion program at Bonneville is expected to increase the annual capacity there by 8 million smolts, and was funded by the Corps of Engineers as mitigation for the loss of natural spawning capacity caused by the John Day and Umatilla dams.

Unless these smolths are bred for, and released at, sites far upriver from that hatchery, they will in no way compensate for the losses for which the mitigation was appropriated.

This was typical of decisions made by the Fish Commission of Oregon prior to the merger.

It could only benefit the below Bonneville gillnetter and the ocean fishery off Washington and Canada.

Since that money was appropriated as compensation for losses upriver, it should have been used there for whatever good it could accomplish for that area, like rehabilitating appropriate small streams.

Saturating the Columbia below Bonneville with millions upon millions of fall chinook smolts, almost totally unavailable to Oregonions, has other hazards. It encourages such a frenzied orgy by fishermen of other nations, especially including Canada, in pursuit of those fish, that our intermingled natural spring and summer runs are being wiped out.

It also encourages discriminate harvest by the non-selective gillnet, which in taking those lower river fish that do return, also takes upper river and tributary runs that are in danger of extinction.

We need to look at this thing critically and determine where to go from here. Continued saturation of the lower river will wipe out our natural runs. Extinction is forever.

The complications facing us in protecting those resources of which non-Oregonians take more than we do, are enormous, without even mentioning those problems brought about by the Belloni decision.

For example, there is little to be accomplished by giving back Oregonians hook and line troll, either sport or commercial, when those fish would mostly be picked up by someone else.

It should be noted, however, that the average troller is said to be losing $100 annually (1973 OSU Report) and if he ever did prosper, without severely limited entry, then the pressure would immediately double on both the supply and the market.

Beyond any doubt, commercial fishery, both Indian and non-Indian, must have limited entry.

Harvest in the lower Columbia is another matter. While the selectivity of the troll can be improved by use of barbless hooks, and by marketing hatchery fish, so that others might be released, the present harvest by gillnet is indiscriminate and non-selective.

The lower Columbia gillnetter takes fish that have identified themselves only as Columbia drainage fish, by entering that river's mouth, but are not yet separated into groups destined for various tributaries.

Lead off by our own John McKean, the directors of all the fish and game agencies of Oregon, Washington and Idaho spoke in favor of selective, terminal fisheries at the recent Salmon and Steelhead Symposium in Vancouver.

If we are going to save most of our threatened runs, it will have to be by moving in that direction. The place to begin, because it is very critical and because we have reasonable control, is the lower Columbia.

Because the Oregon-Washington line runs close to the Washington shore of the river near the mouth, Oregon can unilaterally control most of the fishing, and if Washington does not go along we must do so without delay.

The spring run is against the Oregon shore almost exclusively. The most important part of the accompanying questionnaire deals with measures needed to establish only selective fishery in the lower Columbia. Only a handful of the lower fishermen are dependent on a fishery for their living. More than 90 percent are moonlighting and are losing money. (You should get the OSU report.)

Oregon has five hundred gillnetters (app.)

Your earliest possible response will greatly aid us in giving your position the best publicity. If you have a question about any part of the questionnaire, my telephone is 546-2296, at any hour.

Chairman ABOUREZK. John Bay for Bay News Co.

I guess he is not here.

Well, that finishes this panel. I want to express my thanks to all of you for your contributions. I appreciate what you have had to say and your point of view.

I might try to assure you that as long as I have the responsibility of the chairmanship of the Indian Affairs Subcommittee in the Senate, I want to do what I am capable of doing to help resolve this dispute out here to the reasonable satisfaction of both sides. I don't know if that is within my power, but I just want to tell you I will try.

I appreciate what you have had to say, and I hope that you won't think this particular hearing will bring to an end the contributions that you might make.

I have talked to Senator Hatfield during some of the testimony about what kind of legislation we can undertake to start right now trying to resolve this dispute, and when we get some legislation put together, we will have more hearings on that specific bill to get ideas from you and others.

I hope that you will work with us and cooperate as much as you can, because it is in the interest of the Congress to resolve the dispute as it is in your interest. So the more help you give us, the better the legislation will be.

I thank all of you, very much.

Frank, you raised your hand, do you want to make one other statement?

Mr. Amato. You mentioned that everybody should be fair. As far as an overwhelming majority of the Northwest is concerned, Judge Boldt wasn't fair in his interpretation of what "in common with" meant. When you wind up giving one-half of 1 percent of the population 50 percent of up to 90 percent of the fish runs—it just lacks commonsense.

The law not only has to be good, it has to look good in decisions, too. It is just a real problem.

Chairman Abourezk. I wonder if it might not be fair to say that what Judge Boldt was doing was interpreting the terms of the treaty as he read them.

I used to practice law and I always said that any judge who decided against me was unfair, and if he decided for me he was fair. I don't know if that is the case here or not.

Mr. Amato. There is a Washington State Supreme Court justice, in fact possibly several of them, that have a substantially different interpretation of "in common with."

They consider it to be an equal opportunity fish rather than putting a 50 percent or 25 percent, or some type of percentage on it.

But, anyway, thank you.

Chairman Abourezk. I would now like to hear from representatives of the commercial fish industry.

I understand that Bob Hudson is representing that industry here today.

Mr. Christenson and Mr. Hudson, I would like to welcome you to the Commission hearing. I don't know if you were in the room when I said if you have a long prepared statement, we will put it in the record. We would like you to summarize your statement so that we will be able to hear the rest of the witnesses.

## STATEMENT OF BOB HUDSON, BUSINESS AGENT, ALL-COAST FISHERMAN'S MARKETING ASSOCIATION, INC.

Mr. Hudson. Mr. Chairman, you haven't had a redneck presentation here today yet.

The commercial industry is pretty confused with what is going on with the Oregon commercial industry. We don't take exception to the rights of a treaty to be honored as long as both parties are agreeable to that treaty, and have, over the years, had a treaty established. We recognize that to sit down and discuss problems that exist between the treaty tribes and the non-Indian user groups is a legitimate way to solve problems.

We don't feel that to inflame it is the right way to go.

We have seen the *Boldt* decision literally tear Washington apart. User group has been pitted against user group. The human rights issue of the tribes in Washington has been set back considerably. There have been killings and there have been shootings. This can be corroborated by checking with National Marine Fisheries Enforcement Agency or the Washington Department of Fisheries.

We haven't had to deal with that in Oregon. I am proud that we haven't and I think that our director will continue to carry us along the line of dialog instead of other methods.

A good illustration of this was the Columbia River fall gillnet season, which under the encouragement of the director, the gillnetters and the Indian tribes got together and resolved their differences to such a degree that each user group could function.

I should introduce myself, perhaps. I am the business agent for the All-Coast Fisherman's Marketing Association. We are the third largest fishery marketing association in the United States. We are also here on behalf of the Brookings and Gold Beach Fisherman's Marketing Association and the Port Orford fishermen, which effectively represents 500 vessels in total.

We have been following the Columbia River issues closely.

Although we take a very, very small percentage of the Columbia River chinook, most of the fish that were impacted on our coastal streams and the Columbia River were coho.

We take perhaps one or two steelhead per year per boat, and that is promptly put into the oven.

They are good to eat, but it is the devil to get caught with one if you are a commercial salmon troller.

We have got other problems that we have got on our minds besides fisheries or besides the treaty situation.

We got involved with the Siletz issue to some degree. It is like punching a tar baby; once you get into it, it is pretty hard to step clear of.

We did step clear of it and take a strong position on behalf of the McKean amendment after determining that there was in fact some basis for believing that there is interest in fisheries getting through the tribal restoration. Therefore, we stopped support.

What are some of the issues that confront us? One of the issues is that the way we are being dealt with now by National Marine Fisheries Service makes us believe that we are going to be a dying industry within the next 10 years.

Our National Marine Fisheries Service has allowed, and I say "allowed," because they haven't taken an offensive posture on behalf of the fleet. They have allowed the American portion of the U.S. market, the American fishermen's portion, to deteriorate to 30 percent, by some of the more optimistic estimates, to 20 percent, by some of the more pessimistic estimates.

The imports are dominating us. We have seen increased programs being cut from the commercial fishery, private catch, and money is not being invested in the American fishery. Large investors don't want to put money into the American fisheries; they are uncertain of the future. What if these nontreaty tribes do gain fishery status?

What if you are going to start talking in terms of millions of dollars, and we see foreign countries investing heavily in the foreign industries, in fact dominating the whole spectrum of everything but catching.

There are several bills in the legislature right now. One is the Commercial Fisheries Improvement Act of 1976, which is Senate bill 3624, which was designed specifically to allow the American commercial fishery to increase harvest under the 200-mile fishery conservation zone.

Upon contacting National Marine Fisheries people in Washington, D.C., top level people, they said they are not interested.

Well, any time you have a Government bureaucracy that is not interested in administering millions of dollars worth of funds, something is not right. So we did some more checking and we discovered another bill which was the National Aquaculture Organic Act of 1976, H.R. 14695, and found out that ultimately that the Office of Management and Budget is cutting off funds for fleet support in favor of this new ploy which National Marine Fisheries has adopted. Evidently somebody has failed to recognize that any country that has a strong aquaculture program has a strong companion.

So we are not only concerned with Indian fisheries and fishery allocation; we are concerned about the overall posture of the Government toward this.

I am delighted that we are having an opportunity to have this hearing, and I am delighted that it is being done by and large without inflammatory statements.

At the last American Indian Policy Review Board meeting, which I attended, because I've got to stay up on what is happening, I was attacked personally when I got up to respond.

I gave what I thought was a legitimate noninflammatory response, and the Chairman of that Policy Review Board apologized to the Native Americans present for it.

If this gives you an idea of what direction that Policy Review Board was going in, Lord help me if I ever have to go to court and have a jury that is as opinionated as those people were.

I don't like Indians, I don't like anybody; I like people.

The only thing I can say I like or don't like is Presbyterians.

Chairman **Abourezk**. I just checked with Senator Hatfield. That is not his denomination.

Mr. **Hudson**. What I am trying to say, perhaps to paraphrase Director Donaldson's remarks, is that I believe we will have to resolve this one on one insofar as we can.

But we are reaching a point where we have to have leadership at the congressional level. We have to have these hearings. We have to have input from all the user groups.

I might remind you, though, that while we are having this input, that we are losing fish through blundering, through the destruction of the dams.

A good case in point was a complete run of natural chinook that was wiped out at Priest Rapids. The water level was dropped at an atomic generator intake. There were spawning grounds in that area that had eggs.

Somebody forgot to turn the water off. A whole natural run of fish was lost, and there were National Marine Fisheries Department and

Washington Public Utility people on the side standing on those spawning grounds.

We are losing so many fish accidentally that unless we get some activity pretty quick, the Oregon Commercial Salmon Fishery is going to be out of business. We were cut back this spring on the salmon run of which we get between 2 and 6 percent, as Mr. Meuret pointed out.

This fall, on the Columbia River, the gillnetters took 100,000 fish. This year their allocation I think was 28,000 or that is what they took. The upstream escapement for the tribes and enough fish to restart the hatcheries was set at 240,000 fish. There are over 290,000 fish up there right now, and they are having trouble dealing with it.

So no matter how good our biology is, it's very difficult to second-guess salmon. They can go the other way just as easily. This is what makes it so terribly critical that we expedite and give top priority to this.

I have just about run out of gas. I am obliged to you for your time. I appreciate your hearing impartially, and perhaps Mr. Christenson would like to say something.

## STATEMENT OF DON CHRISTENSON, OREGON GUIDES AND PACKERS ASSOCIATION

Mr. CHRISTENSON. Mr. Chairman, Senator Hatfield, I am Don Christenson, and I am here representing the Oregon Guides & Packers Association. This is a statewide group of professional hunting and fishing guides. Perhaps it sounds to you like maybe I should be in the sport fishing category; however, we do our business to make a living at what our activities entail, and as a result we kind of feel that we are more in a commercial sense, although we do have to abide by hunting and fishing regulations.

Our work goes along quite closely in the fishing end of it with the commercial fishermen.

First, I would like to mention the fact, as I am instructed to do, that our organization is in full support at this time of the position taken by the Oregon Fish and Wildlife Commission.

That was reviewed here this morning. Now, we didn't pick this out of thin air or out of some newspaper story; we have made a very thorough investigation of this problem, as much as we possibly could.

At our recent annual convention last January, we had representatives of the fish and wildlife commission—including John McKean, who was then the director; Alan Kelly, who was then chairman of the commission; and Dr. Gene Cruz, who was deputy director at that time.

That brought us up to date on their most recent views.

In the evening at our banquet, our featured speaker was Mr. Charles Wilkinson, the attorney for the Siletz people. So we got a pretty good look at the latest reports on both sides.

At a previous convention we had, Mr. George Dicer as a featured speaker, an attorney in the Indian problems from the beginning.

Since that time, our legislative committee has been active in keeping up with progress on what is going on. So I am trying to show that this isn't something we just picked out of thin air. Our group, at this point, as I say, are in general agreement with the position taken by the Oregon Fish and Wildlife Commission.

Now, it was mentioned a while ago, Mr. Chairman, that perhaps some cooperative effort should be instigated by the Oregon Commission between the two factions that are involved here which I think is a basic, sound, good idea. But already this is underway. Not necessarily sponsored by any State agency or Federal agency, but Columbia River Alliance Pact is more or less made up by people from the user groups—both sides. They have held several conferences in Oregon and Washington. We have attended as many of them as possible, and we find that pact is professional in the business, and so forth. We have little trouble communicating with the other side, although many of them are quite a bit stiff necked about guaranteeing that their rights aren't going to be taken away from them. We still have been able to sit down and reasonably and sensibly talk among ourselves.

It looks like some progress is being made. But we are getting out on a limb all by ourselves with no funds to operate with unless we take it out of our own pockets—pool up a kitty.

Our travel is paid out of our own pockets. We have to take time off from our professions to do this. We are not necessarily under the leadership of any Federal body or State body; we are trying to do this among ourselves.

Like I say, progress is being made. The problem we are facing, gentlemen, is urgent; it needs to be done now, and not 5 to 10 years from now.

Now, I'm no politician or an attorney, and I realize that you people are busy above your ears with thousands of problems. I don't know whether it is even possible—perhaps I am talking out of the corner someplace—but I would like to see instead of a commission set up, and a few subcommittees out of this Commission, and a few task force groups out of the subcommittees wasting all this time and expense running around talking to this group and that group, and so forth, why can't a definite commission or committee, or whatever you want to call it, be set up, manned by personnel who are familiar with the problems so that we can sit down with proper advisory groups, scientific groups, user groups, and so forth and let's have this thing out. If it takes 2 days or 2 weeks, 2 months; who cares? Let's get something done.

We need that kind of leadership.

Inasmuch as the U.S. Congress is the only body empowered to change a law or do anything with this problem, I think by going directly to the horses mouth instead of bouncing around through this agency and that agency and wasting all this time, by the time all these people get together and their ideas put together and recommend it to Congress, who knows how many years will be gone by? And by that time, it is going to be too late.

So that would be my suggestion, if it is possible to do.

It is a terrible problem, and we are certainly not here trying to kick anyone in the face. We feel in lots of ways that Judge Boldt's decision was perhaps not quite fair, but like I say, I am not a judge nor an attorney, so I don't know about this thing.

We are only trying to solve a problem, and we need the leadership and the funds to do it. It needs to be done now, not 5 or 6 years from now.

Chairman **Abourezk**. I am going to ask Senator Hatfield to comment on that.

Senator **Hatfield**. Mr. Christenson, the Chairman and I have been making a few notes here along the way, and it is interesting to note that you have really come up with something that appeals to us.

Anyway, I expect to have a piece of legislation drafted next week, after I return on Sunday.

The idea that we have been sort of talking about this morning privately, which you have now brought forth in a very definitive way, cites a precedent from the Hopi-Navajo controversy that existed and ranged over a long period of time, where the Federal Government moved in to set up this very kind of commission. Let's call it a commission. At this moment, it makes little difference what we call it—to help to resolve that and which did lead finally to the Federal legislation resolving that conflict.

What about a bill that would set forth a commission made up of Indian and non-Indian users from Oregon, Washington, California, including State agencies such as the management agencies of those States, to come up with a recommendation given specified time? In other words, we would set a time that we would want to report back from this agency that we have created, recommending the kind of Federal legislation that evolved out of that kind of commission. Communication and discussion. That would solve this particular problem.

As I understand what you have just stated, this—at least in the light of what we have been sort of chatting about here this morning—would have the impact, or the support of the Federal Government by creating this at the Federal level. But it would be made up of the people here in this area that is mostly concerned.

It would give Senator Abourezk and myself the kind of direction that would seem most meaningful for Congress to solve this problem.

Chairman **Abourezk**. I think it is an excellent idea, Senator Hatfield. The need for some kind of negotiations between the factions is pretty obvious.

What Senator Hatfield means is that you have an equal representation of the tribes on one side, commercial and sport fishermen on the other side with the State management agencies sitting as more of an advisory part of this particular commission—to advise them on fish numbers and what can be done and what can't be done.

If you don't have a recommendation coming from that kind of reasonable agreement, then it is going to be up to the Congress to ram a decision down the throat of one side or the other—which both of them may not like. I don't think that is really the function of the Congress. The function of the Congress ought to be to try to do what it fairly, justly, and reasonably can for both sides in a dispute.

I don't know of a better way to do it than to take the recommendations agreed upon by both sides and put that into legislative form.

Mr. **Christenson**. Senator, I feel this way about it. The only thing we are trying to do now with this Columbia River Alliance thing is—the general theme seems to be at the moment—let's first do something about restocking the runs and getting some fish. Then we will talk about who is going to get them.

Now, we go on this cooperative theme. We make an agreement among ourselves that we will do so and so and you will do so and so. But, you know as well as I do that there are bad apples in every barrel, and a bad apple is going to create some more bad apples, and it just keeps growing and growing. Without a foundation of fair and equitable law to follow, I am afraid that cooperative is going to face a lot of trouble.

I don't know whether these treaties are passed as law or can be changed or negotiated or what, but it is quite obvious to a lot of people that what was good 100 years ago doesn't apply to the present-day situation at all. So this is where a lot of conflict is, of course.

It seems to me that in order to make any kind of a cooperative effort work, that there must be a sound basis of law somewhere to take care of those bad apples that are going to create enough problems to ruin the whole thing.

Senator HATFIELD. I understand what you have been saying to me, that this tends to meld with the outline I made.

Mr. CHRISTENSON. Yes.

Mr. HUDSON. Mr. Chairman, I believe that such a group exists in the Columbia River Basin Fisheries Alliance. The alliance is chartered, and I will have to paraphrase it.

It says that although deep differences exist between the user groups, that those differences will not be discussed. What will be discussed is the reestablishing and making the Columbia River a safe place for salmon so salmon can live.

Members of the alliance are the Nez Perce, the Umatilla, the Yakima, the Warm Springs Tribes, the trollers, the commercial trollers, the commercial gillnetters, the steelheaders, the packers and guides, and the Northwest fishermen's wives. It is a complete cross section of the user group spectrum. We have representatives from Washington and representatives from Idaho. The only thing we lack is funding because we have no funding base. So we can only become effective through our recommendation and our political efforts to stop, or examine closely, the industries that operate and contribute to either the increased sanctuary capacity in the Columbia River or the deterioration of this.

Senator HATFIELD. I think we are really not in any disagreement, if I understand what you have said, Mr. Hudson, but I think we have to move ourselves cooperatively to rehabilitate and to address ourselves to problems of the runs of the various species. I had in mind that in here would be a single purpose commission, as I understood Mr. Christenson, which would address itself not to that long-term or short-term problem of restoration of the runs but to resolve this question and conflict here.

Mr. HUDSON. Oh, right. My illustration was that we can sit down and we can——

Senator HATFIELD. I understand. But how do you respond to the outline of the proposition here?

Mr. HUDSON. I think the proposition here is a very good one. I think the Alliance could not address to the political aspects because of the charter.

Senator Hatfield. But they would have a date certain for some kind of a recommendation to the Congress, which may then follow up with legislation to ultimately resolve it. That is what we are seeking. As the chairman has said, if we don't get it from such a group as I have outlined here, who really are the most familiar with the day to day nitty-gritty of the problem, then you end up with a political decision——

Mr. Hudson. Right.

Senator Hatfield (continuing). That ultimately has to be made by a Congress that is far removed. It is not going to be made by this Commission but by the total Congress. Then the whole matter becomes a political resolution, removed from the scene, which you may resent more than what you have at the moment.

Mr. Hudson. There is too much to lose not to participate.

Senator Hatfield. That is right. Whereas, if we can draw it from within the group, the ultimate solution should become a much more workable and ultimately successful solution.

Mr. Hudson. I think the commercial people would be delighted to participate in such a program.

Senator Hatfield. Thank you very much.

Chairman Abourezk. I want to thank both of you very much. It is excellent testimony. We appreciate it.

Mr. Christenson. Thank you for the opportunity.

Chairman Abourezk. I now place Mr. Hudson's prepared statement in the record.

Mr. Hudson. Thank you, Mr. Chairman.

[The prepared statement of Mr. Hudson follows:]

## Prepared Statement of Bob Hudson, Business Agent, All-Coast Fisherman's Marketing Association, Inc.

### THE STATE OF THE FISHERY

This is the gospel according to the stated opinion held by Oregon fishermen in general and All-Coast Fishermen's Marketing Association in particular.

First, are our legislators together on fisheries issues? Do they work together to get legislation passed?

Answer? Unknown. Our representatives and senators work individually for the industry within their scope of knowledge of the industry.

What is the State of the Oregon fishery? What about the Oregon fleet's support from National Marine Fisheries Service (northwest region). As far as the port goes, we see very little, if any. Financial aid through boat loans is nil. Aid from National Oceanic and Atmospheric Administration through direct informational aid programs has come to a virtual standstill.

OMB has reduced moneys to NOAA and NMFS to bear subsistence levels for all fleet programs.

National Marine Fisheries Service seems to have a new toy, however, in aquaculture. Large expenditures are planned for the future, while exhaustive studies are funded as fleet programs founder. A "National Aquacultural Organic Act of 1976" (HR 14695) was introduced this year by Representative Leggett (and 23 other Representatives) which will make huge amounts of monies available for aquaculture pojects.

A "Commercial Fisheries Improvement Act of 1976," S. 3624, is also under study and will be examined in the 1977 legislature. It is sponsored by Mr. Hathaway and Mr. Sparkman. We give it about a zero chance, believing it to be a smoke screen behind which H.R. 14695 is gearing up to make an end run for the goal (and the funds).

Top level NMSF people have already said "they are not interested in S. 3624."

Stop and think * * * a bureaucracy not interested in administering a multimillion dollar assistance fund (designed to get this country a bigger piece of the Two Hundred Mile Bill pie).

The gut feeling many men have here in the Oregon fishery is that we are the forgotten industry and that our days as an industry are numbered.

Our markets reflect the health of our consumer interest, but foreign imports increasingly take up the growth potential we ourselves should be exploiting.

*1975 imports (in part)*

| *Type and country* | *pounds* |
|---|---|
| Flounder: Netherlands | 1,540,908 |
| Cod: | |
| Iceland | 30,755,092 |
| Denmark | 45,674,142 |
| Poland | 6,309,864 |
| Pollock: | |
| Iceland | 48,972,768 |
| Norway | 13,870,642 |
| Denmark | 15,284,849 |
| Korea | 36,700,335 |
| Japan | 17,150,337 |
| Crabmeat: Japan | 1,287,122 |

The American fisherman controls 30 percent or less of the entire U.S. market. The remainder is served by imports.

This increasing loss of market reflects directly the effectiveness of domestic fishery programs and administrative policy and attitude towards the American fishermen.

Why is private capital not being invested in the American fishery? Large investors are reluctant to put money into an industry that the administration and the legislature will not support * * * but foreign investors spend heavily * * * buying out U.S. concerns at an alarming rate.

Gentlemen, the American fisherman knows what's going on * * * we beg for your support (as we always have), but we also plead for priority status in program and budget allocation before we go under entirely.

There isn't that much time left until American waters are empty of American vessels.

Thanks for your attention and concern.

Very respectfully, Bob Hudson, Business Agent, All-Coast Fishermen's Marketing Association, Inc.

Chairman Abourezk. The next witness is Mr. Phil Bladine.

## STATEMENT OF PHIL BLADINE, NEWSPAPER PUBLISHER

Mr. Bladine. Mr. Chairman, Senator Hatfield, I am Phil Bladine. I am publisher of the News-Register in McMinnville and I have been an editor and publisher in Oregon since 1940. I have had newspapers on the Oregon coast, in the metropolitan area, as well as the Willamette Valley, so I am pretty familiar with most of the areas of the State.

I feel like I am just about to flap my wings and fly like a duck, because the Senator has just shot me down. In addition, I have to say, because I agree fully with this, that this is an approach that we must take.

You have my prepared testimony here and I don't think there is any reason for me to take the time to go into it. You have it for the record.

Chairman Abourezk. It will be inserted in full in the record at the conclusion of your testimony.

Mr. Bladine. I would like to make a few remarks. In the latter part of the testimony I did point out that the situation in my mind today is threatening the preservation in the Columbia River fishery and a lot of our other resources, and that if those who support the resource withdraw their backing, and if this court-ordered mess that we have results in a real, total management chaos, then all Americans are going to lose. I don't think many people challenge that.

I believe Congress must face up to the ultimate consequences and then proceed to eliminate special rights for natural resources which traditionally have been a part of our common heritage. Any cost burden must be shouldered by all citizens of the Nation, and not just those directly involved with the resource.

I am a sportsman, certainly, and not a fish expert, but if there is any contribution that I can make to this record, it might be in the area of economic development.

Senator Hatfield knows that I have been involved with economic development in Oregon for a long, long time. I think I know as much about community development and hard-pressed areas as anybody in the State.

I am tremendously sympathetic to the problems of the Indian people, as I pointed out in my testimony, and I still think that they are involved with a second-class citizenship situation.

I am not sure that the course we are following is going to result in the best for the Indian people in the long run. When I look at what has happened in our own community from the 1950's on, with such terrific hardship situations, I am not sure the Congress, with a little bit and not a great deal of help, instead of tremendous expenditures, could provide some assistance and some guidance in which the Indian people could go a long ways toward solving their problems much more than the course that we are following today.

I look at our home community as a pattern and I know what has happened there.

Senator HATFIELD. Thank you very much, Mr. Bladine. I appreciate your appearance here today.

[Prepared statement of Phil Bladine follows:]

### PREPARED STATEMENT OF PHIL BLADINE, NEWSPAPER PUBLISHER

Mr. Chairman, I am Phil Bladine, publisher of The News-Register, McMinnville, Oregon, and candidate for Congress in Oregon's first district.

I sincerely appreciate the opportunity to testify today before your Commission. Because of the critical salmon fishery controversies on the Columbia River system and the proposed Siletz Indian Reservation Restoration measures in Congress, the question of Indian fishing rights has drawn significant interest in the 1976 campaign.

There are few Americans who do not view with regret the treatment afforded American Indians during the pioneer expansion era of our nation.

Establishment of most reservations was handled with near barbaric procedures and little consideration given to the future welfare of the Indian nations.

Once the reservations were established. Acts of Congress administrative edicts, pressured by the emerging nation's rapid development, frequently eroded both the lands and numbers of Indian people.

However, many of the Indian nations, backed by the power and expertise of Federal agencies, recently have succeeded in regaining control of substantial portions of natural resources which once were the exclusive property of their ancestors.

Federal court decisions in Washington and Oregon have given what I feel to be, a disproportionate share of the salmon fishery, for example, to treaty nations until such time as the various States work out divisions satisfactory to judicial authorities.

Meanwhile, sportsmen, commercial fishermen and state management authorities are increasingly concerned over militant demands by tribal representatives for up to total control for some resources.

Such demands have been made in the Northwest, for example, both in the Puget Sound and Columbia water sheds.

The basis of common usage, long a part of U.S. law and going back into Indian tradition, seems lost in the controversy.

People of our region are truly concerned that the Federal Government has not moved effectively to solve the Indian rights issue. When the Dalles Dam was constructed and some 27.5 million dollars paid for fishery rights, it was not made part of a final settlement program.

Revival of rights cases on the Klamath Territory, action by Oregon's Southwest Coastal Tribes to take hunting and fishing law into their own hands, and similar situations in other sections of the country, have brought fears that proposals such as the Siletz Bills might result in new use and management confrontation on delicate resources along the Oregon coast.

I sincerely believe the long-standing and unsettled claims of many Indian nations must be settled equitably. During the past several months I have attempted to meet with spokesmen for every aspect of the issue, including a session with the Council of the Siletz people lasting several hours. From the discussions I have concluded that leadership is critically needed to bring all factions together behind reasonable solutions.

Oregon's fish and wildlife officials may have made a significant start toward successful cooperation on the Columbia in talks underway now with Indians, sport and commercial fishermen and Federal attorneys. That, however, impacts only one river system and leaves unsolved the overall Indian rights issues affecting other areas, forest resources, water and minerals.

If we can resolve the outstanding claims—and if we would move ahead with significant action to provide real help to the various Indian people, instead of second-class citizenship ward care—we would be on a correct course. I have seen, in my own community, what local citizens can do to meet economic adversity, without great governmental assistance. I believe Congress must provide, if it will, aid and direction for the hard-pressed Indian people.

The situation today actually threatens preservation of such resources as the Columbia Fishery. If those who support the resource withdraw their backing, and if the court-ordered mess results in total management chaos, all Americans will lose. Few challenge that conclusion.

I believe Congress must face up to the ultimate consequences, and then proceed to eliminate special rights for natural resources which traditionally have been a part of our common heritage.

Any cost burden must be shouldered by all citizens of the nation, and not just those directly concerned with a particular resource. Once this is accomplished, these resources must be managed effectively, for the benefit of every American.

Members of the Commission, in closing I strongly urge adoption of the amendments offered by the Oregon Fish and Wildlife Commission, as a first step toward resolving the present conflict. Thank you.

Senator **Hatfield**. Next we will call Mr. Charles Wilkinson.

## STATEMENT OF CHARLES WILKINSON, ATTORNEY FOR THE SILETZ TRIBE

Mr. **Wilkinson**. Thank you very much, Mr. Senator.

I will be brief. I know there are several other witnesses still to testify.

Like most people here, I am intrigued by your suggestion. It is a matter that I intended to take up, but I, at least, want to see if I am clear in what your suggestion is.

In regard to the resource base, as you have called it, it seems to me that in the last few years, our delegation, understandably, has been forced to have other issues on the front burner. I am thinking particularly of the timber legislation, the resources planning acts in 1975, and most particularly, the timber legislation bill this year, has taken a tremendous amount of energy.

It seems to me that it is time now that the timber legislation is passed, to put our other greater resource in the Northwest truly on the front burner.

There has been a lot of legislation introduced by yourself and by others. Some of it has been passed, other pieces haven't.

But I think it has been a band-aid approach, and it is really time for our delegation in both States of see that our other great resource needs attention now. We have to tend to it.

We need an omnibus bill, and I would hope that there might be some thought given—even to joint hearings with the Interior and Commerce Committees— to really tear into this question, to hire staff, special counsel, so this matter will be treated with the kind of urgency that has been indicated today.

It is time to put it on the front burner, and if that is what you are saying—that the resource problem now has to be taken care of—then I certainly think that is terrific.

Senator HATFIELD. Mr. Wilkinson, I cannot agree with you more. Probably one of the problems we have had, at least since my time in the Congress, is that there has been some conflict in the local area between so-called commercial interests and sports interests in the fisheries. We may have let that dichotomy exist for too long, and as a consequence the resource itself has suffered.

If you recall, we have been arguing jurisdiction and off-shore problems of fishing from foreign fleets. We have been arguing it from a jurisdictional point.

I remember when we moved it from 3 to 12 miles, and then the argument to 200 miles. I have consistently supported those band-aid approaches, but I have also made very clear that this, to me, did not represent a solution. We have to address the problem from the resource.

Political jurisdiction doesn't solve those problems. It may delay and provide us with breathing time if we all address ourselves to the ultimate issue, which is the resource.

We have been dealing with problems of introducing legislation to help reimburse fishermen for boats that are being seized by foreign governments. We have tried to help them in getting low interest loans to help rehabilitate their inadequate fishing fleet and to get appropriations to increase hatchery programs. I have been involved in all those things, but I have felt the frustration. As you point out, we are dealing with band-aids.

I am hopeful now that Dr. Donaldson, and others who are the experts—and I only use him as illustrative of the field of experts who are not necessarily fish biologists—but I think commercial fishermen, sport fishermen, and others who have great expertise can come together now with a comprehensive, integrative proposal. I stand ready to fight it out and to work for it, but I am not an expert. I have to rely on those who are. Up to this point, we have been dealing with the most crisis-type issue and not really a long-term solution.

I think your point is most well taken and I invite the kind of assistance that I deeply need, being in a sensitive position where I can be helpful, namely at the funding level.

After all, we can legislate and legislate, but unless we implement it, it doesn't mean very much. And that is the key to that kind of role on the funding committee of the Appropriations Committee.

I proposed this other idea, just a moment ago, to address itself again to a single issue, but which has great implications to the total solution of the resources problem. I did not intend to create the impression here that that proposal is the ultimate solution or panacea, but I do think it would give to us, in the Congress, a very important help and aid in helping to solve this Indian-non-Indian user problem that has arisen through the court decisions.

I would certainly want to compliment you on putting your finger on possibly the more fundamental issue as far as the long term is concerned.

Mr. **Wilkinson**. One organization that has been mentioned, that I think should be mentioned again, is the Columbia Basin Fisheries Alliance, which is composed of all or many of the user groups and is a new and young organization, but has a lot of potential. If there is some way, Senator, if you are at the bill drafting stage to consider funding for that organization to draft them into the bill in a formal way, I would suggest you consider that.

Senator **Hatfield**. Why don't you assist us in that, and anyone else here, by drafting up a proposed bill. We can then amalgamate all those and we will send it back out to get further input.

Mr. **Wilkinson**. We would be very happy.

Senator **Hatfield**. I don't have a complete bill in mind; I just have a concept in mind. I invite your contributions, and anyone else here to make suggestions.

Mr. **Wilkinson**. I think the more recent speakers have spoken somewhat optimistically about the possibility of cooperation. I will just indicate that my view, at least, is with them.

I am representing the Siletz tribe and working with the claimants on their game management plan. I know that those tribes remain willing to work with Mr. Donaldson and the others. And I, at least, am somewhat optimistic about that.

In approaching the question of Indian treaties, I urge, and I will be very brief on this, to keep the matter in the legal context which I know we are.

Treaties, unlike any other document that I know of in the law, have a moral tone to them.

Senator Abourezk is correct in comparing them to a contract, but the law holds them in a higher station than merely a contract between private parties, and there is a moral obligation involved.

I would hope that if this question of the resource allocation is taken up by the Congress, that Congress proceed, as its duty as trustee, with the general notion that every other step will be exhausted before the question of treaty abrogation is considered. In other words, Congress, as a trustee, has a moral obligation in these documents. I think that Congress should search every other issue before reaching the question of abrogating Indian treaties.

The question in the course of improving the resource is the first and most complex one, but I think that that should be absolutely exhausted before we turn to the question of abrogating Indian treaties.

Congressman Bonker from Washington, who is a man who chooses his words most carefully, spoke to the Northwest Steelheaders recently and said that to abrogate Indian treaties would be moral and intellectual dishonesty.

Coming from a Member of Congress like that—others have spoken that way—I think that is the context we are talking about. And I think that these other alternatives should be exhausted first.

Turning briefly to the question of termination: The State witnesses were asked what the State's position is on termination. I want to make it clear that Governor Straub, the Oregon delegation, and many other State officials, have said in no uncertain terms that termination is wrong. If the members of this Policy Review Commission, we are in front of today, have reached any tentative conclusion before your final report comes out, I suggest that it is, termination is wrong. I was disappointed to hear the State's witnesses not come out strongly on that point.

It was wrong, and I suggested that the final report of this Commission is going to suggest that it was perhaps as wrong as any policy that we have ever had except perhaps the Indian wars themselves.

And I think that is the kind of context we are talking in when we are talking about the Siletz bill and the Klamath treaty rights.

I find it very ironic that the State, in other words, would choose today to testify about taking away even more rights of terminated tribes when they have been treated probably worse than any single group of Indians by our Federal Government.

Just to clarify a couple of points that did come up concerning legal issues in termination, I want to make it absolutely clear that the Klamath hunting rights that were awarded in *Kimball* v. *Callahan* do not involve private lands. And that was discussed this morning.

There is a footnote in *Kimball* v. *Callahan* which makes it clear that the tribe was not claiming rights on private lands. Weyerhaeuser owns some lands on the former reservation. That land is not the subject of the treaty rights that are claimed by the tribe, because the tribe agrees that the private owners can exclude the tribal members from that land, so that if they are going to exercise treaty rights on private land, it has to be with the owner's consent. I think that is important.

Most of all the treaty rights of the claimant tribes are being exercised in Wanema National Forest, not on private land.

I think Senator Hatfield is aware that there is no anarchy of any kind on the Klamath Reservation. The Klamath tribe has adopted a management plan which has set up a court system to handle offenses by the tribe. And they have set up regulations which are stricter, in many cases, than are the State regulations for hunting.

Again, to bring Mr. Donaldson back into the picture, because I think his appointment is so terribly important in these issues, this is a matter that the tribe plans to negotiate with his Commission.

Further, finally, to mention briefly the Siletz bill. There has been a lot of talk here that the confrontations in the Northwest have not been physical as they have been so tragically in South Dakota. I am not sure that the conflicts out here have been any less tragic.

The Siletz bill is a bill that deals with termination and restoration issues that, along with treaties, are first and second perhaps in importance to American Indians, as Senator Hatfield knows and consulted wisely with legal experts from all across the country. In the Northwest, there are no hunting and fishing rights granted by this bill. The Siletz restoration bill is nothing more than a simple authorization bill that adds a lined item to the HEW budget and the BIA budget. That is what the Siletz restoration bill is. Hunting and fishing is not involved in that bill.

I suggest that that is painfully aware to Members of Congress who have to use up their automatic typewriters writing letters to their constituents telling them that hunting and fishing rights are not involved. I think it is aware to the State people now, too. I think it is time to put that sad chapter of a conflict, that to the Siletz people is as serious as any physical conflict.

Senator HATFIELD. Why, Mr. Wilkinson, is that false notion pursued so vehemently and so tenaciously by people who should know better?

Mr. WILKINSON. We have talked about that in private and my answer is no better than now. I don't know. Maybe it is because they are using the bill as a forum for other issues, because clearly it has other issues. The Columbia River issues——

Senator HATFIELD. For the record, Mr. Wilkinson, will you tell us what your credentials are to speak to this legal question?

Mr. WILKINSON. I am a law professor at the University of Oregon. My specialty is Indian law. I have been in practice since 1966, when I graduated from Stanford Law School. I have been involved in Indian law for the last several years.

Senator HATFIELD. And would you cite other competent legal authorities that would support your position on this for the record? Just name a few?

Mr. WILKINSON. There are two amazing legal authorities to support my conclusion. The Library of Congress in an exhaustive memorandum—really two memorandums—concluded the Siletz bill does not grant any hunting or fishing rights. That is an independent research arm of Congress. The Department of Interior's top Indian lawyer testified that the Siletz hunting and fishing bill grants no hunting or fishing rights.

I think with a member of each political party here, I think that perhaps we can have an agreement that perhaps the only issue that the administration in Congress has agreed on during the entire calendar year is that the Siletz Restoration Act doesn't grant any hunting or fishing rights.

Senator HATFIELD. What about procedural rights?

Mr. WILKINSON. There are no procedural rights granted in those memoranda.

Senator HATFIELD. Thank you, Mr. Wilkinson.

Mr. WILKINSON. I have nothing further. If you have any questions, I would be glad to address them.

Chairman ABOUREZK. I have none. I want to express my thanks to you, Mr. Wilkinson, for your testimony and the contribution you have made today. I appreciate it very much.

The next panel of witnesses will be those representing various Indian tribes who have shown an interest in these hearings.

I would like them to come up to the table as I call their names.

Jerry Running Fox of the Coquille, Chetco, Tutututni Tribe; Dennis Carnope, Warm Springs Tribe; Wilfred Wasson, Coos Tribe; Karleen McKenzie, Tchinouk Tribe; Russel Anderson, who also represents the Coos, Lower Umpqua, Suislaw Confederation; Bill Brainard, and Edgar Bowen.

Are all those people here?

And Art Bensell of the Siletz tribe.

I don't know if all of you were here when I announced, but I would like to try to keep your testimony as short as possible. If you have statements prepared, we will accept them into the record as though fully read.

We would appreciate your expressing your viewpoints or your feeling as concisely as possible, and then the statements, of course, will be there for the entire Commission to read.

So if Jerry Running Fox would start.

## STATEMENT OF JERRY RUNNING FOX, COQUILLE, CHETCO, AND TUTUTUTNI TRIBE

Mr. RUNNING FOX. You have my testimony, so I will not go over that, except just a couple of points which I feel are important to the nontreaty tribes of Oregon. Most of my testimony concerns nontreaty tribes of western Oregon.

I feel that nontreaty tribes have just as much right, if not more, than the treaty tribes do. And the confederate-recognized tribes of the United States, because of the fact that we may not have a treaty, this means that the Government has not carried out any part of the obligations of what they were supposed to do according to the treaties.

Before me here I have a lawbook—Statutes of Oregon of 1855. It was published in 1855.

This has all the laws concerning the Indians which were made before Oregon was even made into a State.

This book was published just before the treaty was signed with most of the coastal Indians. Most of the treaties were lost, like with the Coquille Indians, Tutututni, Lower Umpqua, and Suislaw—the treaty was lost for 19 years without being found. So, therefore, when the Government did find the treaty, they decided there was no use ratifying this treaty because they already had the lands. Anyway, the Indians already had been removed from it. They had been put on a reservation. Half of the reservation had already been terminated.

What I just wanted to go into was a couple of points that I feel were pretty important.

A Senate document in 1895, which the Commissioner of Indian Affairs wrote to the Senate asking for help with the Indians—I will not read the whole thing here. I will just read two important parts in it.

One of the stipulations of the treaty of August 11, 1855, referred to the reservation as a certain quantity of land for the occupancy and use of the Indians along the coast of Oregon.

At the time this treaty was signed, the reservation had already been set up, and Mr. Palmer, who negotiated the treaties, had sent letters prior to the completion of the treaty, 5 days before the treaty was signed. So, therefore, the Government declared that the reservation was not set up as a legal instrument, that it was not a legal reservation according to the treaty.

So this treaty had been ratified. There would still have been no reservation for these Indians. There have been no reservation hunting and fishing rights.

So, therefore, without the signing of the treaty, and I have got this from six different U.S. attorneys, that no contract can be binding on one side without being binding on the other. And without a treaty, the Indians gave up no rights whatsoever. The Indians gave none of their lands away. Without a treaty, there was no land to be given away.

The Indians did not give permission to the U.S. Government to supervise their affairs. Therefore, these Indians still have all of their God-given rights that were granted to them 14,000 years ago—they have proved most of these tribes have been here for 14,000 years. Well, they have found evidence of 14,000.

In the last paragraph of this Senate document of 1895, it states—one line in here—the Commissioner of Indian Affairs says, "I feel an unratified treaty cannot be obligative to either party."

The question which must of course be answered as negative, therefore, with no treaty, the Indians of Oregon give up none of their rights. In that statute of the State of Oregon, the ordinance of 1787, it is said there that the law of the territory shall be a compact between the Thirteen Original States and all territories west of the Ohio River.

In the preamble of this law, it states it is hereby ordained—wait a minute—and declared by the authority aforesaid that all—I had this copied on the machine. It didn't copy very good.

This shall be a compact considered as Articles of Compact between the original States and the people and the States and the territories and forever remain unalterable by common consent.

According to the Federal Government: Common consent means people of both sides.

With no treaty, this means that the Indians did not give their consent for even the State of Oregon to be made into a State, because in the ordinance of 1787, it states that no people shall move into the territory until a ratified treaty with the Indians is accomplished.

It also states that the Governor from time to time shall have the land surveyed and laid out into townships as the land is extinguished by treaty.

Therefore, with no treaty, the State of Oregon could not even be a legal State as far as any country west of the Cascade Mountains.

So, therefore, how can the State of Oregon try to manage the hunting and fishing rights of the Indian population when they have no legal rights to be here.

This ordinance of 1787, the law of Oregon, which was made by the Congress of the United States, even supersedes the 25th code of the United States concerning Indians, that they will no longer recognize them as independent nations.

They have to recognize them because they are going against one of their own laws in order to make this new law even fit the code.

This is all I would like to say. I would like to relinquish the rest of my time to the Klamath Tribe.

Thank you, Senator Hatfield, and Senator Abourezk.

Senator **Hatfield**. Thank you.

Chairman **Abourezk**. Dennis Carnope of the Warm Springs Tribe.

## STATEMENT OF DENNIS CARNOPE, ATTORNEY FOR THE WARM SPRINGS TRIBE

Mr. CARNOPE. I am Dennis Carnope. I am one of the tribal attorneys for the Warm Springs Tribe. At the front table, with me, I have Harold Culper, who is chairman of the fish and wildlife committee from Warm Springs and Nelson Walulatom, one of the officials on the wildlife committee.

Chairman ABOUREZK. Jerry and the rest of the witnesses, because we don't have much room, when you finish you might move and let someone else come up and take your place.

Mr. CARNOPE. Mr. Chairman, I have submitted some written testimony and I won't go over that. I will touch on it briefly.

I would like to make some comments concerning some of the things that other witnesses have said here today.

We apparently are the only one of the recognized tribes that is appearing at the hearing today. I don't know the reason for that other than I am sure it is not for lack of interest of the other federally recognized tribes.

We have been a party to the litigation in Judge Belloni's court in the U.S. District Court for the District of Oregon in the case of the *United States* v. *Oregon*, and now Oregon and Washington, over the last some 7 or 8 years. The comments that have been made by other speakers have, I think, somewhat distorted the picture that exists in the Northwest.

We very firmly believe that these court decisions recognizing the treaty Indian fishing rights are going to be the savior of the resource, the anadromous fish in the Columbia River system, because at least everybody is paying attention to this particular resource now and they weren't before.

To point out some management deficiencies that the States have suffered under and some problems that they have allowed to be created and allowed to exist, that they have not been politically able to deal with, and because of the fact that the Federal courts have recognized the treaty rights to the extent they have all parties focusing on these treaty rights and on the fishery resource: We think there are two major factors with regard to treaty fishing rights and hunting rights that have to be considered.

The first is the recognition of the rights. Now, they have been recognized by the Indian people since time immemorial and of late we have had a situation in which the Federal Government has recognized the rights and has come to the aid of the tribes in seeking to enforce those rights. We have had, in recent years, numerous court decisions recognizing the treaty fishing rights, but we still have a problem. It is illustrated here today, that many of our non-Indian citizens still don't want to recognize those rights. And they complain that they are not fair.

Well, I submit to this panel, and those people, that the Federal court system has been set up to determine what is fair. That is the job of the Federal courts. I think there might be some clue in the fact that the Indians have won every one of those cases.

And in *United States* v. *Oregon* specifically, we have had probably 15 to 25 hearings on different issues in that case over the last 7 years, and we have won every one of those hearings.

I think that must be a clue to those people. And I think it is not Judge Boldt and Judge Belloni that are making these decisions. They have been both upheld by the Ninth Circuit Court of Appeals and the U.S. Supreme Court has refused to review them and make any changes in those rulings, so that is the law.

We are not going to be able to deal with these problems of the conflicting use of fisheries till everyone realizes that is the law, and we have to start from that space.

Now, I don't mean to suggest that the people I represent are inflexible in their view toward the fishing rights. We recognize the point of view of other people. We recognize that there is a disruption of their utilization of this resource by the recognition that it has been given by the Federal courts.

You suggested in your comment to Director Donaldson and Chairman Steiwert and Mrs. Hall that there be some sitting down and some dialog between our people, and they were very guarded about their comments in that regard. They were very guarded because of the very delicate nature of some discussions that are going on presently.

We think that we may be on the verge of a major breakthrough in this area with regard to people sitting down and recognizing the other person's point of view. It is my own personal feeling that the State of Oregon is ready to do that.

The State of Oregon has fully recognized the Warm Springs complete jurisdiction over their own reservation resources. We have had a very successful program and a cooperative arrangement working with the State, and I think the State of Oregon is prepared to recognize the existence of treaty fishing rights and to deal with them on that basis.

I think the ability of the State of Oregon to do that depends on the attitude of its citizens, and I think the State of Washington's attitude, hopefully, is coming around to the same respect.

Again, Washington has made most of the law on Indian fishing by their recalcitrant to deal with it as something that even exists. And that was pointed out by the ninth circuit court in its opinion.

So again, I think that we are on the verge of some major breakthroughs in this area, and we are very hopeful.

Now, the other factor in dealing with these treaty fishing rights are the means of implementing and enjoying these rights just the same as any other resource of the Indian people, whether it be land or timber or water, that resource has to be tapped and developed for their utilization. The Columbia River fisheries are of great economic value. They are also a course of great cultural and religious significance and subsistence value to people, but that resource has to be developed for their use.

Well, how do you develop it now? You have to develop it now by getting the runs back to the level that they were. I think this has to be by means of Federal moneys being contributed not just to the States—certainly, you need to continue to have programs for it that will benefit the States, and the programs in lower river user groups, and also development of Indian programs. We have been fortunate on the Warm Springs Reservation to have the ongoing project for Warm Springs National Fish Hatchery that Senator Hatfield was instrumental in working with us on. We appreciate, tremendously appreciate, it. And that is the type of project, while it is on the Indian reservation, it will be a benefit to all of the citizens as well as the Indian tribes of Oregon and Washington and all the citizens who fish off the coast of the States.

We need to have continuing work in that respect because we all enjoy these same resources, if we can only get them back somewhere to the point they were.

I do believe that once we do that, we won't have to argue about who gets what share. There will be a sufficient resource so that the treaty fishery can exist and can be a viable, realistic fishery and recognize the paramount rights of the Indian people, and there will be ample resource for the others. Thank you.

Chairman Abourezk. Thank you. Let me ask you and also all of the other tribal representatives to comment on this question sometime in your testimony: What do you think of the concept suggested by Senator Hatfield of a joint negotiating commission of Indian and non-Indian, using the State management people in the three States concerned as technical assistants What is your view of that?

Mr. Carnope. Depending on the form it takes, Senator, something quite similar to that is going on at the present time. And I cannot really tell you too much more about that, but if the idea is to develop legislation to solve this problem, I think you have to look at it from where we are as far as representing work and working with the Indian people. We have litigated, fought, and lived and died with this case practically every day.

I am involved with this case every day. That is the magnitude of this case. And my involvement is nothing compared to my Indian clients.

The only thing we hear anyone else saying is the Congress has to solve this question. What they are saying is that Congress has got to buy the Indian off. We haven't heard anyone suggest any other legislation except buying the Indian off. As you well know, the Indian doesn't want to sell.

Chairman Abourezk. Let me just repeat the concept again so you will know what we are talking about, and I would hope you will restrict yourself to discussing that.

Mr. Carnope. Surely.

Chairman Abourezk. When we talk about Congress coming up with a solution, I think you probably know as well as I do that if this issue and this controversy continues to generate as much heat and emotion, that eventually Congress is going to have to step in and settle it.

You just can't let it go. You can't let people continue to go at each other like they are. Hopefully, in the 20th century we have gotten beyond the point where we have to live by the law of the jungle. That is the reason for impartial groups to step in and settle the controversy. We don't let people take the law into their own hands.

Now, granted, the Indian had these rights as interpreted by the courts. The problem you face is that there are a great many non-Indians—who outnumber Indians. That is the problem. Congress may at some point, at the urging of the Representatives and Senators from the States, be moved by political consideration and might ram a law down the Indians' throats that the Indians don't like. They might change those treaty rights, and that is perhaps not desirable from your point of view.

On the other hand, Congress might say the Indian has these treaty rights and that is the way it is going to be, and the rest of you settle down and accept that.

Who knows what Congress will say? I don't know, and certainly I don't think anybody can speak to that.

What I am saying is: To avoid coming down to that kind of a solution, would it not be better if both sides to the controversy sat down and tried to recognize the rights on each side, just as you have said?

Mr. **Carnope**. Absolutely.

Chairman **Abourezk**. Non-Indians must recognize Indians have these rights. Indians must recognize, on the other hand, that there are considerations to be looked at on the non-Indian side. What better way is there than for both sides to sit down and come to some kind of reasonable solution and then ask Congress to legislate on that basis? Is there anything wrong with that?

Mr. **Carnope**. No, there isn't, Senator. All I was saying was to the point that the only legislative suggestion I have heard was the abrogation suggestion, and I was going to go on to suggest that the kind of thing you are talking about is what we need. We need to have a comprehensive program, because we are not dealing with an Indian problem. It is a fisheries problem, it is a people problem, it is an economic problem, it is a social problem, and it is a huge problem.

Chairman **Abourezk**. That is right.

Mr. **Carnope**. But it is worth almost any attention we can give it—any commitment that Congress can make to help solve it. We will share happily in any solution that can be achieved.

I believe that the conflict of the Columbia River Basin Alliance came from one of the people on the Warm Springs committee.

Originally the concept of the tribe was the one that has sponsored the first meetings to get this idea going, because we have to have the dialog with these people. We can't expect them to understand our problems and we can't expect to understand theirs if the only contact we have is in the courtroom or in some consultation period.

Senator **Hatfield**. The point you have made is precisely what we have tried to counteract this morning.

We are trying to bring out from the people most directly involved—namely, the Indians and non-Indian groups right here on the scene—other ideas than what you have heard thus far. The legislative then would be in a better position to take meaningful action to reach a solution. But the chairman has said—what I would like to reiterate—is that short of that, you are going to end up getting a political legislative decision or solution, and that may not be a solution at all, just an action taken by the Congress.

So our idea is to propose that we set up some kind of machinery—with the blessing of the Federal Government to give it support and undergirding—to come up with some kind of an agreement that we believe that reasonable people—who have testified here this morning, who have indicated they would be willing to sit down and talk this thing out—could reach some kind of proposal or solution.

It may then require legislative action at the congressional level, but it would be emanating out of the groups here, rather than out of the Congress back there.

Mr. CARNOPE. Certainly, Senator, I heartily agree with that. Don't think we are not aware of the fact that when you count up sides, who is on which side, and don't think that we think that litigation is the answer to this problem. We have litigated the problem to death and we are not getting anywhere for anybody.

Senator HATFIELD. Yes; and in the long run that in such procedures as just endless litigation, only the lawyers come out on top.

Mr. CARNOPE. That is true. [Applause.]

Mr. Chairman?

Chairman ABOUREZK. Yes.

Mr. CARNOPE. Chief Walulatom asked if he might make a brief comment. Nelson Walulatom, who is from the Warm Springs Tribe.

Senator ABOUREZK. That is fine. I don't have any objection to anybody making a comment here. The only trouble is that we have only 29 minutes left and I had hoped everybody would get a chance to talk, so please try to keep it very short, if you would.

Mr. CARNOPE. Thank you.

## STATEMENT OF CHIEF NELSON WALULATOM, WARM SPRINGS TRIBE

Chief WALULATOM. My comment, or statement, is a very short one. I don't want to take too much of your time, but just from the Indian standpoint or thinking, we don't take the treaty to be just a piece of paper, or a contract. We look at the treaty to be a very sacred document. The manner that this treaty was entered into, from the standpoint of the Constitution of the United States, we don't look at the piece of paper to be something that is out of date. The commercial clause, the property clause, and the Northwest ordinance: These things I don't look at as being old and out of date.

This is the standpoint that we look at our treaty rights from, and our attorney is speaking on our behalf in the Columbia River fishing, but we are also involved in other off-reservation fisheries, which include angling and hunting. These things we look at as very sacred, our rights to graze animals which fall under our treaty.

We have had our differences with the non-Indian fishermen. I heard quite a few steelhead fishermen speaking this morning. We look at the steelhead as something sacred that we use in our religious ceremonies. We use in sacred ways of preparing other food fish that we have. So when we get together with non-Indians sometimes these views are from the standpoint that we look at them as a resource, a food fish that we use, and they are using it as more of a sport to play with. It would be like the sacred cow of India. This is the way that we look at this resource from that standpoint.

I just wanted to bring out that we still honor that treaty, and, hopefully, that the Constitution of the United States doesn't go out of style in our protection under that Constitution, the commercial clause and property clause and the Northwest ordinance will still be honored. We are glad to sit down and talk to anyone, any time, over this resource. Thank you.

Chairman ABOUREZK. Thank you very much.

Wilfred Wasson of the Coos Tribe.

## STATEMENT OF DR. WILFRED WASSON, COOS TRIBE

Mr. WASSON. I came here today to speak to you in my professional capacity as Dr. Wasson.

Jerry Running Fox spoke of this State not having jurisdiction. I believe I can support his statement very well that the State does not have jurisdiction.

The State can only gain jurisdiction over Indians through the Federal Government, because the Federal Government has reserved unto itself the right to make treaties with Indians. So, therefore, the State of Oregon cannot usurp that right unless it is granted through the Federal Government—until the Federal Government extinguishes Indian title—then they cannot grant the right to the State. Therefore, I reflect the idea that the State has no right to regulate my fishing.

Chairman ABOUREZK. I wonder if you would do me a favor and comment on Senator Hatfield's proposal on the joint Indian-non-Indian fish users commission?

Mr. WASSON. I would be very uncomfortable with the State acting as moderator, because I believe it is——

Chairman ABOUREZK. That is not part of it.

Using other commissions that we have had of this nature, as a precedent, you would probably have the American Arbitration Association or some professional, very neutral, official arbitrating association as the moderator. The States would be there to provide technical information only.

Mr. WASSON. That I would go for. I think this is a reasonable idea that everybody could pretty much live with.

We have had no trouble sitting down and talking with commercial fishermen. Northwest steelheaders do tend to get a little emotional and carried away once in awhile and seem to think that giving Indians fishing rights, that we are going to immediately go out and destroy the salmon runs. History does not bear this out. The salmon and steelhead runs were there for many thousands of years before white people ever got here.

Indians had gillnets all that time. In fact, there has been nothing new in the art of catching fish developed since white people got here.

But Indians never destroyed the salmon runs. They had a great surplus. They had a great surplus of steelhead. I don't see where Indians are going to destroy it. In fact, I think Indians are probably far more respectful of this resource than are white people because white people have destroyed it. They destroyed it through neglect; not so much through over use, but through neglect.

I would like to see us sit down—all people who are interested in fish—develop a plan, and all of us get together so we can fight against Weyerhaeuser, so we can fight against Georgia Pacific, so we can make changes in logging processes so that spawn beds are not silted in.

I have to admit that I had a share in destroying fish runs in the Coos River.

I worked for a timber company. We were running splash dams. We didn't know any better. I guess the white people didn't know any better. There were lots of salmon then; now there are none.

We would like to see more salmon. Our interests are in increasing salmon runs, not destroying them. I was very glad to meet Mr. Donaldson here today. He has agreed that he will work with us. But he seems to think that the State has to be an authority over it. I don't agree, because I think our aims are the same. I think we can work together and ignore the fact of who has authority over whom, because we are both interested in improving fish.

We have a proposal for economic development. A part of that proposal is building fish hatcheries. Any fish hatchery can produce a surplus, and we intend to use that surplus for restocking streams.

Dr. Donaldson has agreed to work with us so that we don't inadvertently put in a fish that might be diseased and maybe infect other fish that were there naturally, because we certainly don't want to do anything like that.

Chairman Abourezk. I want to thank you very much, Dr. Wasson, for your testimony and your expressions here today.

I now place in the record the material submitted by the Coos, Lower Umpqua, Suislaw Indian Tribes, Inc.

[The material follows:]

### Prepared Statement of Bill Brainard, Vice Chairman, Coos, Lower Umpqua, Suislaw Indian Tribes, Inc.

Dear Senator Abourezk: Public Law 588 states that there will be termination over the property of certain Indian tribes.

The main word here is property. Therefore, only the supervision over the property of the local Indian tribes was terminated.

The opinion of the tribal council of the Coos, Lower Umpqua and Suislaw Indian tribes is that they retain the right to hunt and fish at all "usual and accustomed places."

The opposition to this inherent right to hunt and fish at usual places comes directly from officials of the State of Oregon.

In the opinion of the Coos, Lower Umpqua and Suislaw Indian Tribes, the argument is not with the State of Oregon, but rather with the Federal Government.

We feel that should the occasion arise to bring the issue of hunting and fishing rights into a court of law, it would be a literal waste of time to bring the subject to the attention of the state courts. These tribes would request and prefer a fair and just trial at the Federal level.

It would simplify the case if the people at the State level would refrain from harassing these tribes in the exercise of that right to hunt and fish.

These tribes would hunt and fish only within the aboriginal grounds. No "crossing" of ancient tribal boundaries would be tolerated. Likewise, any other tribe could not exercise rights within the traditional territory of the Coos, Lower Umpqua and Suislaw Indian Tribes. The only instance that this may occur would be that the other tribes would hold a valid hunting or fishing license from the State of Oregon.

We cannot and will not tolerate the mass exodus of Indian people to the traditional ground held by these three tribes.

In the past history of these tribes, this was not practiced and so it will be carried out today.

We hope you will consider these statements in the overall picture of the case for hunting and fishing rights.

I personally thank you for your interest.

Sincerely,

Bill Brainard,

*Vice Chairman, Coos, Lower Umpqua, Suislaw Indian Tribes; Southwestern Oregon Delegate to the Governor's Commission on Indian Services.*

[Bay, Oreg., Saturday, Sept. 11, 1976]

### FOR KLAMATH INDIANS ON ANCESTRAL GROUNDS: JUDGE'S RULING FAVORS TRIBAL RIGHTS

Portland UPI.—The right of Klamath Indians to hunt, fish and trap on ancestral lands free of state regulation extends to descendants of persons on the final tribal roll. U.S. District Court Judge Gus J. Solomon ruled Friday.

Solomon also said he hopes the state and Indians will agree on regulations governing hunting, fishing and trapping on the former reservation.

Solomon issued his opinion Friday in an action brought by four persons who were listed on the final tribal rolls and one who was not.

The five sought an injunction against the Oregon Fish and Wildlife Commission and Oregon State Police prohibiting them from enforcing state game regulations against Indians on the lands which made up the Klamath Reservation.

Solomon had dismissed the suit in 1973 on grounds his court had no jurisdiction. The 9th U.S. Circuit Court of Appeals ruled, however, that the court did have jurisdiction and that the Indians retained right to hunt, fish and trap on the land although the reservation had been sold.

Solomon heard argument in February on new motions by the defendant's to dismiss the suit. Solomon said both issues raised by the state agencies were decided by the appeals court and are "now the law of the case."

On the matter of descendants retaining tribal rights Solomon held, "If Congress intended the Klamath Termination Act to terminate all of the treaty rights of the Klamath Indians on the death of the last survivor whose name appeared on the final tribal roll, Congress could have so provided in clear and unambiguous language."

He said under another federal court ruling "the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress."

The judge added, "I therefore hold that the rights of the Klamath Indians to hunt, fish and trap, free of state regulations, extend to the descendants of persons on the 1957 final tribal roll."

Solomon noted, "Plaintiffs do not seek to exercise their treaty rights on land sold to private owners who prohibit hunting, fishing and trapping on the land. Neither do they seek to enforce exclusive rights on the remaining land, most of which is owned by the United States Government."

The Indians are willing to acquiesce in state regulation, Solomon said, if the regulations are essential to preserving a particular species. Indian tribal enforcement is inadequate and necessary conservation cannot be achieved by restricting hunting and fishing by nontreaty sportsmen.

Solomon said, "These conditions appear to conform with the current principles of state regulation of off-reservation fishing rights" established through other court actions.

The opinion said the General Council of the Klamath tribe and recently approved comprehensive hunting regulations covering Klamaths on the former reservation providing for joint regulation with state agencies.

"Apparently the plaintiffs want me to approve their proposal," Solomon wrote. "Although their objectives appear to be commendable I have no authority to judicially approve their proposals. Nevertheless I hope that the Oregon Fish and Wildlife Commission will approve these proposals; or if the commission is unable to approve all of them that the commission will meet with representatives of the Klamath Indians and promulgate mutually satisfactory regulations for the management of the fish and game resources on these lands."

## HUNTING AND FISHING REGULATIONS

### Coos, Lower Umpqua and Siuslaw Indian Tribes

(Revised 1917, 1928, 1947, 1970)

### ELIGIBILITY

#### *Section 1*

Any Native American who is a member of the Coos Lower Umpqua or Siuslaw Indian Tribe and is able to prove his membership, and is not enrolled with any other Indian tribe is eligible for hunting and fishing rights as guaranteed to the aforementioned three tribes.

#### *Section 2*

At the age of 12 (twelve), a member of the Coos Lower Umpqua or Siuslaw, who has proven his eligibility, may hunt with full privileges under adult supervision (adult; 16 years of age) as long as that adult is a proven member of the Coos, Lower Umpqua or Siuslaw and holds a valid tribal hunting and fishing license.

A proven member of the Coos, Lower Umpqua or Siuslaw Indian Tribe may fish with no restrictions placed upon starting age.

### *Section 3*

Any proven member who holds a valid hunting and fishing license issued by the Coos, Lower Umpqua and Siuslaw Indian tribe, and who shall violate any tribal hunting and fishing law or a portion thereof, shall have his license revoked forever.

The name of the member shall, in turn, be submitted to the Oregon State Game Commission to be dealt with by that agency.

Any further hunting and fishing on the part of that member must be done under statutes established for non-Indians by the State of Oregon.

## ISSUANCE OF LICENSE

### *Section 1*

Upon meeting the eligibility requirements, a member may apply to the Coos Lower Umpqua and Siuslaw hunting and fishing office for issuance of a license.

### *Section 2*

Upon payment of a $5.00[1] fee, the member will receive a hunting and fishing license, on which is the member's picture, physical description, license number and legal description of tribal territory. This license is valid for 5 (five) years from the date of issue. Upon expiration, the member must re-apply with a payment of $5.00.

### *Section 2*

Each year, in order to hunt game, the applicant must acquire tags. A yearly fee of $1* will be charged for the tags. Each game animal must be tagged.

1. One-half of each used tag must be returned to the Hunting and Fishing Office WITHIN 30 DAYS OF CLOSE OF THAT PARTICULAR SEASON. Unused tags must also be returned within 30 days of close of season. Failure to do this will result in the denial of tags for the following season.
2. One-half of the tag must be placed on the game animal during transport.

Each tag will be used only by the applicant and may not be transferred.

## AREA

### *Section 1*

Members who hold a valid hunting and fishing license may exercise their rights only within the traditional boundaries of the Coos, Lower Umpqua and Siuslaw Indian tribes:

Starting at a point twelve (12) nautical miles west of the continental shelf and running due east to the mouth of a creek known as Ten Mile Creek, in section 27, township 15 south, range 12 west, Lane County, Oregon; thence east on the water shed between the waters of the Alsea and the Siuslaw Rivers to the summit of said mountains, to the junction of the Calapooia Range, near the headwaters of the Siuslaw River, in township 21 south, range 4 west; thence in a westerly direction following the summit of the ridge between the waters of the Smith and Umpqua Rivers, to a point due north of the head of tidewater on the Umpqua River; thence south across the Umpqua River to the summit of the mountains dividing the waters of Camp Creek from the waters of the Umpqua River thence in a southeasterly direction along the summit of the Coast Range Mountains, to the summit of the divide separating the waters of Looking Glass Creek from the waters of the south fork of Coos River in township 27 south, range 8 west, Douglas County, Oregon; thence west to a point of rocks, known as Five Mile Point, in section 19, township 27 south, range 14 west of the Willamette Meridian, Coos County, Oregon; extending due west to a point twelve (12) nautical miles beyond the Continental Shelf.

Maps of the above described tribal boundaries may be obtained from the Tribal Hunting and Fishing Office.

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*Note: Prices of licenses and tags subject to change.

### *Section 2*

Members who hold valid hunting and fishing licenses are allowed those privileges only on lands that are considered public domain. No member has the right to trespass on property held by private individuals.

### GENERAL RULES

1. Fish, game animals, birds, etc. are to be taken for human consumption only.
2. There will be no trophy hunting.
3. Game animals, fish, birds, etc. are not to be traded, bartered or sold in any way whatsoever.
4. All hunting and fishing may be done at any time of day or night within the season established by the tribes.
5. There shall be no taking of fur-bearing animals, i.e. Beaver, Mink, etc.
6. Only deer, elk and bear may be hunted. There shall be no taking of cougar, cats, coyote or squirrel.
7. While hunting, members must follow common sense safety rules concerning use of firearms.
8. Game animals that have been struck by motor vehicles and are found along the roadway may be taken by a proven member of the Coos, Lower Umpqua and Siuslaw without tagging.
9. Presiding elders, physically present but not physically able to obtain limits of big game, fish, clams, etc. may obtain that limit with the aid of any tribal member.

### SPECIFIC REGULATIONS

### *Section 1*

### BIG GAME

A. *Deer*

Season: August 1 to October 30 of each year.

1. Only bucks may be taken. Barren does may be taken upon compliance with Clause A.
2. Only rifles with a caliber of .25 or more may be used.
3. When necessary, pistols may be used on cripples, but may not be used for the actual taking of the game.
4. No dogs may be used in the pursuit of deer.
5. The yearly limit shall not exceed two (2) deer.

B. *Elk*

Season: From mid-August (15th) through the month of November.

1. There shall be no taking of cows.
2. Only bull elk at least 3-point or better, or yearlings may be taken.
3. Only rifles with a caliber of .25 or more may be used (1,220 foot pounds of energy at 100 yards).
4. No dogs may be used in the pursuit of elk.
5. The yearly limit shall not exceed two (2) elk.

C. *Bear*

Season: The months of July, August and September.

1. There shall be no taking of female bear that are accompanied by cubs or yearlings.
2. Only rifles with a caliber of .25 or more may be used (1,220 foot pounds of energy at 100 yards).
3. No dogs may be used in the pursuit of bear.
4. The yearly limit shall not exceed one (1) bear.

D. *Additional Rules*

1. Pit traps, in the tribal tradition may be used.
2. No muzzleloaders may be used on big game.
3. Longbows or cross bows may be used in the taking of elk or deer as long as the bow has at least 40 pounds pull at the normal draw and arrow length, and the arrow weight is at least one ounce 437½ grains).
4. Semi-automatic rifles with magazine capacities of more than five cartridges may not be used.

5. Military or full metal-jacketed bullets in original or altered form may not be used.

6. Tracer ammunition may not be used.

7. Shotguns may not be used.

8. Big game may not be pursued from vehicles, boats, aircraft or any other motor-driven conveyance.

## *Section 2*

### UPLAND GAME AND WATERFOWL

A. *Blue and ruffed grouse*

Season : October 1 to December 31.
Limit : 15 per season.

B. *Valley and mountain quail*

Season : October 1 to December 31.
Limit : 20 per season.

C. *Mourning dove*

Season : September 1 to October 30.
Limit : 15 per season.

D. *Band-tailed pigeon*

Season : September 1 to October 30.
Limit : 20 per season.

E. *Ducks*

Season : October 1 through the end of February.
Limit : 7 per day, one of which may be a Canvasback.

*Geese*

Season : October 1 through the end of February.
Limit : 3 per day.

*Brant*

Season : October 1 through the end of February.
Limit : 5 per day.

*Coot*

Season : October 1 through the end of February.
Limit : 25 per day.

F. *Additional rules*

1. For all upland game and waterfowl, shotguns only are to be used; 410 ga. to 10 ga. only.

2. Live decoys may be used.

3. Nets may be used.

4. Baiting and feeding methods may be used.

5. Motorboats and motor-driven conveyances may not be used in the pursuit of upland game and waterfowl.

6. Dogs may be used.

7. Dogs may not run at large or be trained in any game bird nesting habitat during the months of April, May and June.

8. Game birds other than those listed are not to be taken nor are nests and eggs to be disturbed.

## *Section 3*

### CLAMS

A. *Season*; All year

Limit :

1. Razor, Horseneck or Empire Clams : 24 each per day.

2. Martha Washington, steamer, mud or cohog clams : 48 per day.

B. *Additional rules*

1. Each person must dig his own clams.

2. Children 11 years or older must dig their own clams.

3. Members of the immediate family may dig the limits for each child 10 or under.

### *Section 4*

#### CRAB

*A. Season*: All year
Limit: 24 per day.

*B. Size*: 6'' across the back of the shell.

### *Section 5*

#### WARM WATER GAME FISH

*A. Sturgeon*
Size: 36''–72''.

*B. Shad, Striped bass, whitefish, mullet, bullfrogs*
No restrictions.

*C. Additional rules*
1. Season is open the entire year.
2. Fishing methods: see "Specific Regulations for Fishing."

### *Section 6*

#### SMELT

A. Fifty pounds (50 lb.) of smelt may be taken per day.
B. No other restrictions are imposed.

### *Section 7*

#### TROUT

A. Season: All year.
B. Size: 6'' or more.
C. Limit: 10 per day.

### *Section 8*

#### STEELHEAD, SALMON, COHO

A. Season: All year.
B. Limit: 10 per day.

### *Section 9*

#### EEL

A. Season: All year.
B. Limit: No limit.

### *Section 10*

#### SPECIFIC REGULATIONS FOR FISHING

1. The following methods may be employed:
*a*. fish traps.
*b*. spears.
*c*. gaff hooks.
*d*. nets.
*e*. rifles, pistols.
*f*. bow and arrows.
*g*. modern fishing equipment.
2. No dynamite or poisons may be used.
3. Members may exercise fishing rights on a commercial basis (see Clause B).
4. Meat lines may also be used in fishing.

### *Section 11*

#### CLAUSES AND AMENDMENTS

1. These hunting and fishing regulations as they pertain to members of the Coos, Lower Umpqua and Siuslaw Indian Tribes shall be reviewed on a yearly basis, at the annual Tribal Meeting in April.

2. Any changes or additions to these regulations must be made with a 51 percent vote in favor by members present.

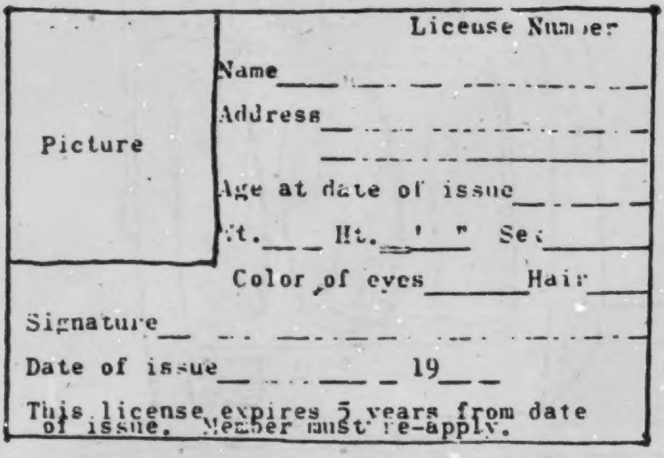
3. Any one violating the regulations as they are set down shall be dealt with as is stated in section 3, 'eligibility.'

*Clause A*

During the legal season for Deer, the applicant may obtain special permission to hunt Barren Does. This may come about only upon completion of a briefing by the Hunting and Fishing Office and the assurance to that office that the applicant is capable of distinguishing a barren doe. The denial or approval of the special permit rests entirely upon the discretion of the Hunting and Fishing Office.

*Clause B*

Members may apply to the Hunting and Fishing Office for a special license to pursue commercial fishing. The office, after review of the application has the right to approve or deny that license.



Picture

License Number

Name__________

Address__________

Age at date of issue_____

Wt.___ Ht.__'__" Sex_____

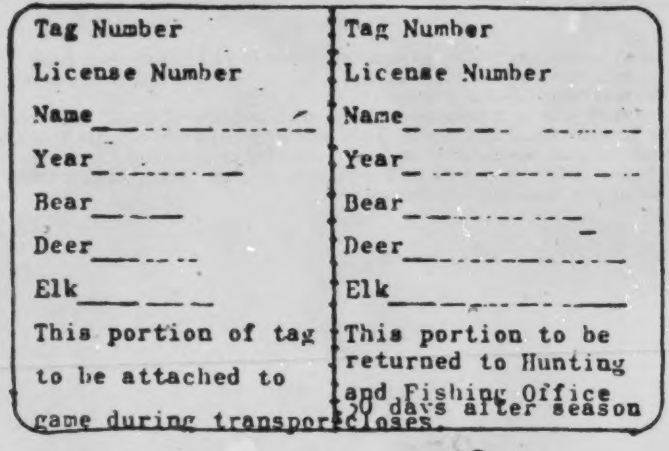
Color of eyes_____ Hair___

Signature__________

Date of issue______ 19__

This license expires 5 years from date of issue. Member must re-apply.

Reverse of card states legal description of tribal boundaries and signature of approving official of the Hunting and Fishing Office.



Tag Number

License Number

Name__________

Year________

Bear_____

Deer_____

Elk_____

This portion of tag to be attached to game during transpor

Tag Number

License Number

Name__________

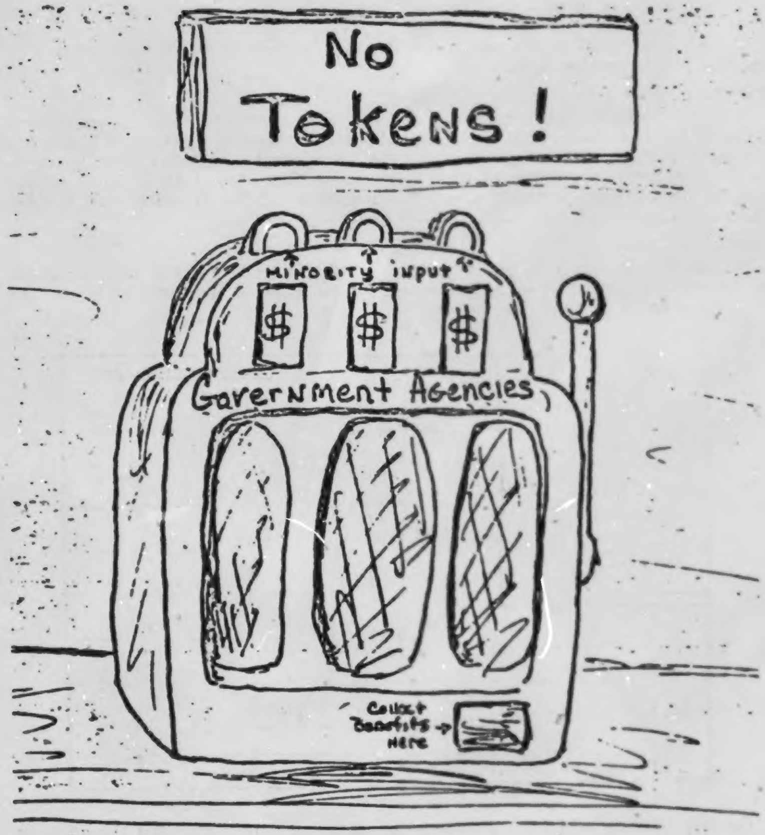
Year________

Bear________

Deer________

Elk________

This portion to be returned to Hunting and Fishing Office 30 days after season closes.


No Tokens!
MINORITY INPUT
$
$
$
Government Agencies
Collect Benefits Here

**Tokenism: A top priority: submitted by Bill Brainard, Southwestern Oregon Delegate May 15, 1976.**

## TOKENISM

A token is commonly known as something used in place of the real thing.

Token coins are used in place of real coins to obtain services or commodities when the real thing is not available.

The parallel here is a person—a token—who, because of ethnic background is used by governmental agencies to fulfill minority requirements. He is a symbol who represents not the majority of "his" people, but only himself.

The token Indian may well be the biggest problem facing Indian tribes and organizations in southwestern Oregon.

After years of patiently and impatiently trying to convince the governmental agencies of the local area that the Indian people must have input into matters directly concerning them, many grudgingly agreed.

Unfortunately, lurking in the midst of things was the token Indian, a handy person for agencies to call upon.

The method most used by the token Indian is, "I represent all these Indian people." This Token many times secretly meets with governmental agencies, assuring them that he is backed by the total Indian population. No time is taken to confirm the Token's claim as a representative. "If you've talked to one Indian, you've talked to them all," still seems to be the belief. Next comes inquiries from representatives from legal organizations in the Indian community. "We've met our minority requirements," state the agencies. "We have Indian input."

The door closes.

The Token stays on, making suggestions to further his own goals and the majority of the Indian community receives no benefit or input.

The governmental agencies thus play favorites with the first Indian person who appears, legitimate or not. They are sold a phony bill of goods by the Token Indian who consistently sells out for a position of power.

Often times, the Token Indian claims to represent no one but himself, but instead lists his education and past "expertise" as qualifications. It's impressive, so the "educated" Token Indian is used.

Again, the agencies do not confirm the credentials of the Token Indian and they are taken on face value.

The legitimate Indian organizations write reams of letters to the various agencies who use tokens. The protest is backed by documents that support the Indian viewpoint. Yet, the city, county, state and federal organizations refuse to acknowledge the concerns.

The agencies sometimes seem to search for the Token Indian, knowing that he will be a "yes-man" to their ideas.

It is incomprehensible how governmental agencies can ignore the wishes of legal organizations who represent the vast majority of Indian people. Instead, a Token Indian is used—for questionable purposes—by these agencies.

In southwestern Oregon, this problem has arisen on many occasions. In one instance, a tri-county organization refuses to acknowledge a large Indian corporation that represents most of the Indian population in this area. Here, a Token Indian is being used to obtain EDA Indian-earmarked monies, with no assurance of benefit to the Indian people.

In other cases, locally, Token Indians are placed on state and county boards. These Tokens are the "surface Indians" or "Apples".

They are Red on the outside, but inside, they think and function as a White.

Governmental organizations love these Token-Apple Indians because he is a minority (minority requirements met) yet, his ideas and input are white-oriented and it is exactly what the bureaucracy wants to hear.

The governmental agencies should be made aware of the Token-Apple problem.

They should be informed that the Token represents only himself and is using that agency for personal financial gain and glory.

They should know that the Token is a virtual outcast who refuses to worK with or for his own people.

The agencies should have guidelines in the selection of minority representatives:

1. Who is this person?
2. Who recommended him?
3. What are his legitimate qualifications?
4. Where is his support? (i.e. letters of support from Indian tribes and organizations) a must!
5. How does he communicate the information to his people?
6. Does he communicate at all?

Perhaps with the use of guidelines, agencies could be assured that their proposals and ideas would receive acceptance, or at least constructive criticism, from all Indian people.

Granted, many agencies use the Token as just that. It is this problem that we, as Indian people are trying to overcome.

We are concerned. We can and will work with any organization who interacts fairly and in good faith.

In short, the Token, the Apple, the Uncle Tomahawk, has no place in our world.

Chairman **Abourezk**. Karleen McKenzie, are you here? Will you move over by the mike??

### STATEMENT OF KARLEEN McKENZIE, CHAIRMAN, TCHINOUK INDIANS

Ms. **McKenzie**. Thank you, Senators, and Policy Review Commission.

I am Karleen McKenzie, chairman of the Tchinouk Indians in southern Oregon.

I have my uncle, Bud Parrzoo, who at one time was in with the Klamath Indians when they were asserting their rights to hunt and fish. That was dropped from the issue, and he never went through to reclaim his rights.

We Tchinouk Indians hunted and fished on the Klamath lands and we, by the Federal Government Bureau of Indian Affairs, giving back the rights of the promised Indians, they did not give them to other Indians that resided on the Klamath Reservation, which our people did for over 100 years.

We Tchinouk lived on the Colorado River, retraced our ancestry back to the mouth of the Columbia River.

By removing us to east of the Cascades, they stilled our voice here on the Columbia River.

We claim these lands, the Columbia River, the streams and rivers that enter into it, the land itself, we assert our rights for hunting and fishing on our land; a total charge be paid us. We believe the Trojan Nuclear Plant has a lot to do with the extermination of the fish, and the dams that are on the river, we feel that the Federal Government created the problem and that the Indians did not create the problem and should have a right to continue on.

Now, on the percentages of catching fish or not catching them, we Tchinouks having been done away with 125 years ago, have not been able to come back and voice an opinion, but we do say—there are 300 of us—we have a right to our opinions.

We think the Commission would be fine except for the fact that the Indians of today, some of them are made up of non-Indians, or people that cannot prove Indian blood. And some of these people are doing this fishing and hunting and making the problems for the Indians themselves. The Tchinouk believe there should be tribal fishing and game offices in parts of Oregon that could establish the identity of the Indians themselves and their right to fish and hunt on lands.

Chairman **Abourezk**. Aside from that issue of who or who is not an Indian: What do you think of Senator Hatfield's proposal of that joint commission that would——

Ms. **McKenzie**. Would he hear us?

Chairman **Abourezk**. The Senate is more likely to hear the larger Indian groups.

Were you listening when we tried to outline this kind of broad concept of a joint Indian-non-Indian user commission; were you here?

Ms. **McKenzie**. Yes; I was listening to that.

Chairman **Abourezk**. All right. What it would contemplate is an equal division of Indian and non-Indians who will negotiate and deal with each other with equal power with a neutral arbitrator moderating the negotiations. Whatever recommendations came out of that joint commission, obviously, would have to be approved by both sides.

So I think that would take care of your problem.

Ms. McKenzie. So far, it seems as though the larger tribes are those that can retain lawyers which we have never been able to—never having been funded.

Chairman Abourezk. It has nothing to do with retaining lawyers.

Ms. McKenzie. We have no voice in any of these hearings.

Chairman Abourezk. It has nothing to do with retaining lawyers. It has everything to do with the two sides sitting down and talking it over.

Ms. McKenzie. I think the Commission would be fine, but they would have to go around to small cities or in other parts of Oregon and Washington.

Chairman Abourezk. We are not talking about holding hearings; we are talking about negotiation meetings.

Ms. McKenzie. It seems very hard to do.

Chairman Abourezk. Just imagine for a minute that we could accomplish it, that we could do it.

Ms. McKenzie. Yes.

Chairman Abourezk. Are you for or against the concept? If you want more time to think it over, that is fine, too.

Ms. McKenzie. I would have to have more information on how it would work.

Chairman Abourezk. Fine.

Ms. McKenzie. I am all for meetings. I am all for hearings or negotiations. Are you speaking of individual people fishing and hunting along with the commercial fishermen?

Chairman Abourezk. We are talking about everybody: Sport fishermen, Indian fishermen, commercial fishermen, whatever. It is a problem that involves all of those people, and they have to sit down and work it out.

Ms. McKenzie. Thank you.

## STATEMENT OF BUD PARRZOO, TCHINOUK INDIANS

Mr. Parrzoo. My name is Bud Parrzoo, and I have a different problem.

In 1973 I was apprehended with a deer. I was picked up by the State Police of Oregon. The State Police said they were getting tired of the Indians hunting and fishing and they were going to make a test case out of it.

So in 1975 I was selling some property in real estate. Doing the title research, they held back $205 plus court costs, against my will.

Chairman Abourezk. Bud, I don't want to be insensitive to your problem, but it doesn't have anything to do with what we are talking about today.

Mr. Parrzoo. Yeah, it has something to do with hunting and fishing rights. By taking that money away from me, they are prejudicing my hunting and fishing rights and other Indians' hunting and fishing rights.

The court can take that away without my saying so, against my will, and they can do it to other Indians. That is the point.

Chairman **ABOUREZK.** Well, all right.

Mr. **PARRZOO.** They are prejudicing our hunting and fishing rights, as well as every other Indian.

Ms. **McKENZIE.** As usual, Indians are at the end and have very little time, so we better let somebody else speak.

Mr. **PARRZOO.** That is all I've got to say about it.

Ms. **McKENZIE.** They don't want to talk to us.

Thank you.

### PREPARED STATEMENT OF KARLEEN F. McKENZIE, CHAIRMAN, TCHINOUK INDIANS

Thanking the chairman, Honorable Senator Hatfield, and members of the American Indian Policy Review Commission present here today to hear testimony on rights of American Indians concerning rights and policies of fishing and hunting issues.

We are the Tchinouk Indians now living in Southern Oregon. Our tribal office being at 5621 Altamont Drive in Klamath Falls, Oregon.

Our treaties with the Tchinouk Indians, negotiated August 1851, by Anson Dart. Anson Dart was appointed to the office of Superintendent of Indian Affairs, which was created by the Act of June 5, 1850.

The Act of February 7, 1851 transferred all duties to the Superintendent of Indian Affairs, Anson Dart. He made 13 treaties with the Indians of Western Oregon, in which he allowed a reservation in each cession, and payments in cash and beneficial objects.

He submitted a report and 13 treaties, November 7, 1851. These were received by the Commissioner of Indian Affairs January 10, 1852, where they were read and ordered printed.

These Treaties were not ratified. They may be divided into three groups: The Tansy Point Treaty (the Tchinouk Treaties), which included 10 of the 13; the 2 treaties at Port Orford, and the 1 with the Clackamas Indians (Interior Department, Indian Affairs Office, title "Anson Dart Submits Thirteen Treaties Negotiated With Indians of Oregon, Also His Report Relative Thereto," November 7, 1851, archives).

The Tansy Point Treaties were made with 10 small bands of the Chinook Indians, numbering in all about 320 Indians. The territory ceded stretched along the Pacific from Shoalwater Bay to Tillamook Bay, a distance of 100 miles, and extended back from the coast about 60 miles.

Each of the 10 bands of Tchinouk Indians reserved the privileges of hunting and fishing upon the lands and waters as set forth in their treaties.

The 10 bands were: (1) The lower band of Chinook Indians; (2) Wheelappa band of Chinook Indians; (3) Quille-que-oqua band of Chinook; (4) Waukikum band of Chinook; (5) Konniack band of Chinook; (6) Klatskania band of Chinook; (7) Kathlamet band of Chinook; (8) Clatsop band of Chinook; (9) Nuc-que-chuh-wnucks; (10) the Tillamook band of Chinook.

The reasons for nonratification of the treaties was they were made with insignificant bands of Indians was probably the strongest objection to them. They did not carry out the Indian policy of Lane and Thurston, which planned for the removal of the western Oregon Indians to lands east of the Cascade Mountains, but gave reservation of the tribal lands.

There also seems to have been an objection to the amount of annuities allowed the Chinook bands. The Chinook Indians were allowed $91,300 in 10 annual installments in clothing, provisions, and other articles; and reservations were set aside at Clatsop Point, Woody and Cathlamet Islands, and Shoalwater Bay.

The land of the Wheelappas and Quille-que-oquas was all given to the Chinook and Chehales tribe as a reservation in the treaty, with an agency farming establishment, blacksmith shop, and $100 for educational purposes.

The Supreme Court in the case of *Jones* v. *Meehan* (175 U.S. 1. (1899)) said: "In construing any treaty between the United States and an Indian tribe, it must always be borne in mind that the negotiations for the treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves; that the treaty is drawn up by them and in their own language; that the Indians, on the other hand, are a weak and dependent people, who have no written language and are wholly unfamiliar with the forms of legal expression, and whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter employed by the United States; and that the treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians."

(Pg. 10–11) 175 U.S. 1, 1899 page 38–*Cohen's Handbook of Federal Indian Law:* "Although such an interpretation of the treaty should be made in the light of conditions existing when the treaty was executed, as often indicated by its history before and after its making, the exact situation which caused the inclusion of a provision is often difficult to ascertain (to find out or learn by inquiry). New conditions may arise that could not be anticipated by the signatories to a treaty (signatories are a person or government that signs jointly with others). A practical administrative construction of a treaty which has long been acquiesced (to accept a plan or statement without open opposition) in by Congressional inaction is usually followed by the courts." Page 38, *Cohen's Handbook of Federal Indian Law.*

Page 44, *Cohen's Handbook of Federal Indian Law*, paragraph 2. " Reserved Rights in ceded lands—by way of softening the shock of land cession, the Indian tribes were often guaranteed special rights in ceded lands, such as the exclusive right of taking fish in streams bordering on the reservation, or the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States or, to hunt on lands ceded to the United States, or perpetual rights of fishing,' without hinderance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States."

125 years ago, August, 1851, our Tchinouk Treaties were negotiated, later ordered printed and tabled—the reasons being insignificant tribes and failure to remove us to lands east of the Cascade Mountains in Oregon.

Over 100 years ago, a part of our tribe was moved to and does remain east of these Cascade Conutains, on lands of the Klamath Indians.

We have fished and hunted with the Klamath, and in doing so, our voices were stilled in our homelands along the Columbia River. The Klamath Indians recognize our Tchinouk that live here, but now the new policies of government does not include our Tchinouk with the Klamath Indians.

The always Federal Indian policy toward our Tchinouk has been a policy of complete rejection, carried on firmly by the Portland Area Office Bureau of Indian Affairs.

It is our land, here on the Columbia River, our waters of the many streams and rivers that flow into into it, and our chinook salmon and other fish and wildlife. We Tchinouk Indians always allowed the use of the Columbia River to other tribes and the non-Indian in moderation, and with the exclusive right to the mouth of the Columbia River for only the Tchinouk Indians.

Our Tchinouk tribe says a toll charge must be paid our tribe for use of the mouth of the Columbia River for ocean-going vessels as well as the many fishermen upon our waters.

In our treaties it is written that until this treaty is ratified we would have the ships removed from the Columbia River and not allowed to come in, to which the Superintendent Anson Dart answers, "We now come to pay you for these lands as has been promised you. We wish to protect you and all your rights. You are receiving nothing for the use of your lands, but if you sell, in a short time, you will begin to realize some benefits of the sale."

To which a sub-agent, Mr. Spalding, adds, "Friends! We are happy to see you. Listen now to what I have to say. The day you have so long looked for has at last come. We stand here now in the place of the President, Our Great Chief, who has long wished to come and pay you for your land. His heart is our heart. Our words to you are as the son and will be as true as the son. We speak not as children, we speak the words of the Great Chief whose children have come here to your country. We speak as brothers. Let us hear what you want for your land. Will you sell all or only a part? We listen to what you have to say."

Needless for us Tchinouks to say, the treaties are not ratified and for 125 years you have trespassed our lands and waters, and this trespassing includes the many dams and ugly Trojan Nuclear Plant that you have paid for with the gold from the many tribes you have taken from, and with the same you have caused the depletion of the fine chinook salmon runs, among other fish runs, and caused the problem here today.

The Indian people did not cause the problem and they should not be made to forfeit their ways of life to those who create the problems.

The Tchinouk Indians ask the protection of the Federal Government to hunt and fish our lands and waters as set forth in the treaties—and to all those Indians who realize the truth of ownership of these lands and waters, to support our Tchinouk Indians in doing so—with also our rights of occupancy, grazing livestock, cutting timber for fuel and building purposes, picking cranberries, and to cultivate as much land as we wish for our own purposes. Thank you.

Senator ABOUREZK. Russell Anderson, Bill Brainard, Edward Bowen.

Would you introduce yourself so the reporter will know your names?

## STATEMENT OF RUSSELL ANDERSON, CHAIRMAN, COOS, LOWER UMPQUA, AND SIUSLAW INDIAN TRIBES

Mr. ANDERSON. Yes. My name is Russell Anderson. I am the chairman of the Coos, Lower Umpqua and Siuslaw Indian Tribes on the coast of Oregon.

Senator ABOUREZK. And you are Bill Brainard?

Mr. ANDERSON. I am speaking for Mr. Brainard.

Mr. BRAINARD. And I yielded my time to the gentlemen of the Klamath because I noticed they did not have any time on the agenda.

Mr. ANDERSON. He is one of my council members.

Mr. Chairman, and Senator Hatfield, I thank you for your opening statements. I think they covered a majority of our problems.

We, the Coos, Lower Umpqua, and the Siuslaw Indian Tribes were illegally terminated. We did not get to vote on our termination, and still have a portion of our original reservation.

No tribal rolls were made and we never got paid, all of which must be met before legal termination. Therefore, not only does the State of Oregon have no jurisdiction over us, but the Federal Government is still in question. So we still stand as a separate and individual nation, because our treaty was never signed by the Federal Government.

We would work with anyone on these issues, and I think a lot of the rules, regulations, laws, so forth and so on, take care of a lot of these problems, but the Federal Government is not instigating and not making them work as they should.

In fact, one of our biggest problems is to be able to speak for ourselves, not let someone else who does not belong or is not authorized to speak for our group or tribes, right from the local level right on up to the Federal level. Therefore, I vigorously protest anyone else speaking in our behalf.

Just like one of our local State senators said about our group when we were trying to talk with them, just what you are mentioning, he says: "There are no Indians in southwestern Oregon and they have no problems."

That is our answer when we try and talk to him.

I thank you.

My written testimony you already have.

Chairman ABOUREZK. It will be inserted in the record as though you had fully read it.

Thank you very much for your appearance.

Your name is?

**Joseph Coburn.** My name is Joseph Coburn. I represent the Klamath tribe.

Chairman **Abourezk.** Would you like to proceed? Are you going to make a separate statement? The representative of your tribe has already spoken. I have two more witnesses I have to get in that were on that list.

## STATEMENT OF JOHN PERRY, LOWER UMPQUA TRIBE

Mr. **Perry.** My name is John Perry and I represent the Lower Umpqua Tribe, and as also a member of the three tribes, also assistant chairman of the Southern RIM, and at this time I would like to say something about this arbitrating board.

I feel that each tribe should have a member on that board. I also strongly feel that the mediator for that board should either come from my old friend and ally of both of our sides, either England or the U.N.—and that is about as plain as I can put it—as the mediator.

That is all I have to say.

Chairman **Abourezk.** Thank you.

## STATEMENT OF JOSEPH COBURN, MEMBER, INDIAN GAME COMMISSION; AND MEMBER, KLAMATH EXECUTIVE COMMITTEE

Mr. **Coburn.** My name is Joseph Coburn. I am a member of the Klamath Indian Game Commission and a member of the Klamath Executive Committee.

I have handed in some testimony.

I would like to thank Mr. Bill Brainard for allowing me some time as we did not get on the agenda.

I would like to make a few rebuttals of some of the previous testimony, which is aside from the testimony I have handed in.

As stated by the State: Termination was to enable Indians to have equal footing with the rest of the population. This was some 20 years ago. I would like to read you some statistics—fairly accurate, fairly recent. Unemployment among the Klamaths is approaching a 49-percent average. Most employed Klamaths are on a seasonal basis. Education: We are approaching a 70-percent dropout rate prior to graduation from high school. Alcoholism and alcohol-related social problems. As an example, 17 percent of the Klamath County Detox Center clientele are Klamath—less than 5 percent of the total population of the county is Klamath.

If this is equal footing, I just can't hardly believe it. We are still second-class citizens, as the editor from McMinnville stated.

Chairman **Abourezk.** Have you been able to think about the Hatfield proposal—about a joint negotiating commission to deal with this fishing problem?

Mr. **Coburn.** Yes, I am mostly concerned with hunting, of course, all Klamaths do not have commercial fishing.

A dam put up on the California side of the line wiped out all our salmon, many, many years ago.

As to some sort of a commission on negotiating: I think I would like to look at it from a historical perspective starting back with early negotiations with Indians—the sale of Manhattan for $24; the eastern seabord; the Manifest Destiny; the reservations system. I don't know that Indians should enter into any more negotiations. We always come out short.

The only thing we can negotiate is what we own. So I am hestitant—I am not speaking for the entire tribe on that matter, but personally I am hesitant in entering into such negotiations.

Negotiation means that we are going to lose something and I think we have lost enough. Thank you.

There were a couple other comments. It was thrown about that taxpayers are footing the bill and that Indians are getting a free ride—this type of thing. Most Indians in Oregon pay taxes, those that are employed, of course.

You can see where naturally half the Klamath Indians are not employed, therefore, they have to have other means of making a living. And this is usually welfare or these types of programs.

Again, the Commission has said, or maybe it was some of the fish interest groups, licenses paid for the fisheries, the hunting, this type of thing.

I have bought a Federal duck stamp, since I was 14 years old. I have bought hunting and fishing licenses much of my adult life, mostly because I know where the money goes and I appreciate what those people are doing.

Many, many Indians do this. We are contributing our share to the public pot. It is not all one-sided.

I think I would like to give some other people some of the time.

Chairman ABOUREZK. Thank you very much.

Your prepared statement will appear at this point in the record.

[The prepared statement of Mr. Coburn follows:]

### PREPARED STATEMENT OF JOSEPH COBURN, MEMBER, INDIAN GAME COMMISSION; AND MEMBER KLAMATH EXECUTIVE COMMITTEE

Hunting and fishing mean many things to many people. Most sportsmen look on them as recreational activities. Many attempt to save money on their food bills by supplementing their larders with game. Economically, the businessman reaps the greatest profit. The suppliers of equipment, gas, lodging and other necessities see hunting and fishing as a boon to their annual sales. One of the greater come-ons in real estate sales pitches is the hunting and fishing available in the area.

Hunting and fishing means something entirely different to a Klamath Indian. As an example, I will attempt to show this difference by taking a look at deer hunting which is of prime importance to us at the present time. I am not sure my people will approve of what I am about to say. To the best of my knowledge, it has not been said in public before, but I feel the issue at hand is important enough for me to take it upon myself to do so.

Boys begin going hunting with their fathers at a very early age. They spend a long, exhausting apprenticeship. During this time they are learning how, where and when to hunt; the deer's habits; how to care for the carcass; et cetera, et cetera.

They are also learning moral lessons. For instance, they learn that the Ga gon (little people who live in the Klamath country) observe them whenever they are in the field. If they should abuse game, such as fail to track a crippled deer down, or should waste game, the Ga gon will go ahead of them in the future and scare game away from them. They will never become successful hunters.

They usually receive their own, or the use of, a .22 at an early age, say 8 or 9. It isn't long before they hunt with these without supervision. They learn not to shoot animals that they do not intend to eat or give to someone who will make use of the meat. They are restricted more or less to varmint type hunting.

When we had rabbits, they would hunt these, but rabbits seem to have gone the way of the buffalo, at least in Klamath County.

Eventually, the boy becomes adept at shooting. He is usually given a larger caliber rifle or the use of one at this stage, about 12–14 years of age. He finally gets to hunt deer.

Klamaths place high status on hunting ability and marksmanship so there is tremendous pressure on the youngsters. Chances are pretty good that he will miss several deer before he finally hits one. His father, who is also very anxious, will explain what the boy did wrong when he misses. When a Klamath boy finally makes his first kill, it is one of the greatest moments he will ever experience.

He must distribute his first kill to other people usually elders, widows, favorite relatives, et cetera.

He will receive a great deal of praise from each. They refer to him as a hunter, but he still has a long time to go as an apprentice.

They will usually give him some gift in return for the meat; a knife, some bullets, et cetera. At first it is very difficult for the boy to face giving away his first kill, as he is so proud of it, but the purpose of giving away the meat is so that he will learn to share his good fortune with those that are less fortunate. The indescribably good feeling that he gets through his procedure of being able to help someone becomes a very strong part of his personality.

The boy is allowed to eat the liver. Through this act he will gain some attributes directly from the deer, Powers, if you will. The boy will gain speed, stamina, altertness and other favorable attributes from his deer which will help him to become a better hunter in the future.

The father is extremely proud of the boy and will have the boy repeat step by step his story of his first kill to other adults.

Almost visibly, you can observe the status gained by the boy with his peers. For a time, at least, he is number one among them.

Now the boy begins hunting alone, or with his peers, but he will still spend much time hunting with his father. He gets more and more proficient at hunting. He often will kill several dear on a hunt. This meat is not wasted, but is distributed as was taught him, and which he will continue to do the rest of his life.

He will begin receiving invitations to hunt with some of the better hunters. Now he is 'big time', as this means that he is beginning to be recognized for his abilities as a hunter.

Eventually, established hunters will begin soliciting his opinions about hunting, and he will be welcomed to tell some of his favorite hunting experiences during 'bull sessions.'

Younger males will seek his advice. He has achieved status, he is a hunter.

Ridicule—the hunting "code" the boy has learned is reinforced by peer pressure, usually in the form of ridicule. An example would be if a poor shot is made, his peers will laugh at him and tease him. The result is that the next time he will ensure a "clean" kill.

This brief description is not a cut and dried procedure. It varies from individual to individual and from family to family. The results are nearly the same no matter what procedure is followed.

Klamath hunters, in general, have a completely different outlook toward wild game. I am not saying that our treatment of game is any better, nor any worse, than any others. I am saying that's what we believe in and we wish to continue doing so, as is guaranteed us by treaty with the United States Government.

Exploitation of game by sportsmen and businessmen over the past 14 years have proven to be disastrous from all viewpoints. Hunting to us is a social institution, an institution that is vital to our lives and it is very much threatened by the policies of game management demonstrated to us by the State of Oregon.

Chairman **Abourezk**. The final witness today will be Art Bensell of the Siletz Tribe.

I want to announce that there were a great many other people, both Indian and non-Indian, who have asked to testify. It would be impossible, with the short amount of time that I have available today, to conduct this hearing to hear everybody. This is not the last hearing that we will conduct on this issue. Obviously, we are going to have to have more, and we hope that you will have an opportunity at that time to present your views.

In the meantime, I want to ask everybody who has something to say in this issue, if they want to, to submit a statement that will go into the hearing record. I will leave the record open for 2 weeks. If you would mail the written statement to the American Indian Policy Review Commission, Second and D Street, SW., Washington, D.C.

If you have them with you today, submit them right now to the reporter, and if you don't have them prepared, you can mail them in.

Senator Hatfield has made a suggestion that might be even easier for you to handle. If you would send the statements within 2 weeks time, because the record will be open for that long, to Senator Hatfield's office in Washington, D.C., he will personally see that they get into the record.

If you have prepared statements today, please submit them and they will be accepted.

Senator **Hatfield**. Mr. Chairman, that is a very simple address to remember. Just my name, Washington, D.C. If you want to put an additional name, you can put Old Senate Office Building, Suite 205——

Chairman **Abourezk**. 20510.

A **Spectator**. Let me ask you one question. How many people are on this American Indian Policy Review Commission?

Chairman **Abourezk**. How many Commissioners?

The **Spectator**. Yes.

Chairman **Abourezk**. Eleven.

Mr. Bensell?

## STATEMENT OF ART BENSELL, CONFEDERATED TRIBES OF SILETZ

Mr. **Bensell**. I am Art Bensell from the Confederated Tribes of Siletz. I would like to have my group that are here today just stand and show that we have representatives from our tribe here.

Chairman **Abourezk**. Is this your tribal council?

Mr. **Bensell**. Yes. Thank you.

Chairman **Abourezk**. I would like to welcome all of you here to the hearing.

Mr. **Bensell**. I would like to comment on the proposal of Senator Hatfield's. I don't speak for the group, but I am much in favor of this type of negotiation.

We have entered into these things before and of course, Senator Hatfield knows my stand on this Siletz restoration bill.

I think I have talked to you, Senator, at length about it. It is a matter of record in the hearings that were held in Washington.

But I do favor this legislation, and although our bill does not have hunting and fishing in it, and it is amazing to me how people can construe something and put into this sort of thing the gut level feeling that we had regarding the bill, has to be held in hostage by the State of Oregon. We are in a box, really, as far as the bill is concerned.

We have the Game Commission on one side trying to take any rights that we have away. And we say, "no." If we have those rights, there is no vehicle in which to take those rights away in case they exist. The older tribal members think we have those rights, but we are not asking for them in the Siletz restoration bill. We think that the negotiations that we could have could be settled by this commission, and I am sure that through negotiations that this can happen.

Just recently, in the city of Newport, we showed our restoration picture. I sat on the panel there and after the movie had been shown, I thought we were in a hot seat for awhile. But, you know, there wasn't one question asked about hunting and fishing, so maybe we got our point across. And that was right down in the area where the hunting and fishing issue was quite a concern. So I think it was very necessary that we sat down and the people that we have sat down with, the fishing groups and other people can't agree. I have not found one yet that is opposed to the Siletz restoration bill, but they are fearful that there is something about hunting and fishing in there that is hidden. But we say, "no."

I thank you for the time that you have given me because I think you have our prepared testimony already on record. I thank you.

Chairman **Abourezk.** Thank you, Mr. Bensell.

## STATEMENT OF RAY BAKER, RESIDENT, EUGENE, OREG.

Mr. **Baker.** I am Ray Baker and I had my name on the list to testify.

Chairman **Abourezk.** I've got it here and I don't——

Mr. **Baker.** I just want to make one comment. By the way, I am from Eugene, Oreg.; Springfield area. I will say, especially about the Siletz restoration bill, they all wondered why we are all uptight—the non-Indians, the fishermen, the sport fishermen, which I happen to be—why we are all uptight about the question of hunting and fishing rights in the Siletz restoration bill. It is all coming from comments from Jerry Running Fox, for one of them.

I am not objecting to the health and welfare and all the rest of this, but at the same time, like this is what makes us all kind of wonder about our——

Chairman **Abourezk.** Well, there may be something to this. However, Mr. Running Fox is not a Siletz Indian.

Mr. **Baker.** I am just using that as an example. But I heard it from some of the Siletz, too.

Chairman **Abourezk.** If the bill is clear in not dealing with the question of hunting and fishing rights, and if the authors of the legislation make it clear, in committee hearings, on the Senate floor, and on the House floor, that is known as legislative history, and that is what the court looks at, both the law itself and the debate behind it.

Mr. **Baker.** But will the court stand behind it?

Chairman **Abourezk.** Absolutely, if it is made very clear like that. The court could decide no other way if a lawsuit ever came up later on. It might be viable if everybody would kind of take the heat out of this thing by looking at it objectively. I think that is the only way you can look at that. It doesn't deal with hunting and fishing rights, and so it has really nothing to do with that issue.

If you don't object to restoration of the Siletz Tribe on the terms stated in the bill, then there should be no real objection to the bill itself.

Mr. **Baker.** Since Senator Hatfield is here, and I have written him letters and he has done me a few favors on social security and things when I got hurt. But what guarantees the non-Indian and the sports fishermen, that they are not going to come back after they get restored as a Federal tribe, which that will give them their status, that they will not come back and—and it has been proven in history in every court in the land—that they will get it if they ask for it.

Chairman **Abourezk**. They will get what?

Mr. **Baker**. Hunting and fishing rights if they decide after they are recognized as a Federal tribe.

Chairman **Abourezk**. They could do that right now if they want to.

Mr. **Baker**. This is why we figured—and I will put my testimony up here. I will say one thing right here, that then it is up to Congress to make sure that that is in there specifically without having to fight it through the courts and start a big heat among everybody. It should be up to them to make——

Chairman **Abourezk**. I ought to make it clear that that is already done, that there is no consideration whatsoever for hunting and fishing rights. Hunting and fishing rights are not touched either way by the Siletz restoration bill. The Siletz Tribe could ask for the hunting and fishing rights right now.

Mr. **Baker**. OK. That is what I am trying to say.

Chairman **Abourezk**. Let me finish, Mr. Baker. They could ask for them right now or they could ask for them afterward. That is an issue that would have to be dealt with separately.

Mr. **Baker**. This is what we have been talking about all day is getting it done without going through 7, 8, or 10 years.

You have been asking them why can't this be done in the bill so we don't have to——

Chairman **Abourezk**. Why can't what be done in the bill?

Mr. **Baker**. That it is put in there that there will not be any fishing or hunting rights other than regulated by the State of Oregon or the State in which they live.

Chairman **Abourezk**. Let me read to you what the Siletz bill says: Page 5, line 1, "This act shall not grant or restore any hunting, fishing, or trapping rights of any nature to the tribe or its members."

Mr. **Baker**. OK, I agree with that. But you said yourself that they can ask for it any time they want to.

Chairman **Abourezk**. That is correct.

Mr. **Baker**. That is why I am saying why can't it be put in that bill so there is no argument on the point. They will get their bill through a lot faster with no heated argument if it is put right in there that the State of Oregon will regulate same, as they do for any other person in the State of Oregon.

That way there is no question then—because all they have got to do is go right back to it and we have got to go right back and fight it in court again. That is what I am getting at.

Chairman **Abourezk**. What you are doing, if you put that in the bill, is raising the question of fishing and hunting rights, which you say you don't want to put in the bill.

Mr. **Baker**. It has already been raised.

Chairman **Abourezk**. This Congress could not bind the next Congress. I hope you can understand that. If the next Congress saw fit or if this Congress saw fit, to restore hunting and fishing rights to the Siletz, they could do it, no matter what a previous Congress has said.

Mr. **Baker**. Why can't they do that with treaties?

Chairman **Abourezk**. They can do that with treaties.

Mr. **Baker**. Well, this is what we are trying to say. Congress is up there trying to represent the majority of the people in this United States and we have elected these people to do that, and they are not doing it for the majority.

Chairman **Abourezk**. You know, there are such things as minority rights, too.

It is just like the 900-pound gorilla. Congress can do anything it wants to do and make it stick with the force of law. But one thing I would hope the Congress would never change, and that is it ought to be fair to all its citizens. When a majority of citizens come in and say we want you to crush this minority because we've got the votes, I would hope that Congress would never listen to that.

Had they listened to it in the South, we would still have slavery today. We would still have tremendous, terrible discrimination against black people now. Is that what you are for?

Mr. **Baker**. No. Now, wait a minute. Now, see, you are jumping right in there. I never said anything about minorities, because I don't believe in it, and if you will read my statement that I handed in, you will see that right in it.

I believe all races—I don't care what color, religion, or race they are—but they have all got the same equal rights, and that is the way it should be. That is what the United States tells us that this United States is supposed to be run that way.

And yet the courts are telling us, no, that is not the way it is. There are a half a million people fishing in the Columbia River, and there are 700 or 800 Indians taking 50 percent of that run. And there are another 250,000 or 400,000 that are not getting their equal opportunity.

Now, you said equal rights, and that is what I am talking about.

I will turn my prepared statement, and it states right in there that I am not prejudiced against any of them.

Chairman **Abourezk**. All right. You are very welcome to put your prepared statement in. It will be considered along with every other statement that has been made.

Mr. **Baker**. But I would still like to have you answer the question on why the Congress can't do something to make sure that——

Chairman **Abourezk**. And I answered the question. I will be happy to answer it again if you want me to.

If this Congress put that in this bill, the next Congress could reject it, or the next bill, and it would supersede what it said here. So it isn't going to do anybody much good to put it in to be very honest.

Mr. **Baker**. You are contradicting what you said earlier. That is what I am getting at.

Chairman **Abourezk**. I don't think so. I would like to hear the rest of your comments, but I have to go catch an airplane, so therefore, if you would either put your prepared statement in or submit it—if you don't have it written—in the mail to Senator Hatfield, I would appreciate it very much.

Mr. **Baker**. Senator, perhaps I could clarify a little bit——

Chairman **Abourezk**. Well, you know——

**Mr. Baker.** I promise not to take much time. I will try to confine myself right to that issue.

In a report to Senator Hatfield received from David Ackerman, and the Library of Congress analysis indicated that without a court ruling—this is an informal analysis, nonlegal, nonbinding—the Siletz Indians now have and can exercise fishing and hunting and trapping rights. And that is a fact, or a very, very good possibility that the sportsmen are aware of——.

**Senator Hatfield.** May I just interrupt a minute? You are quoting from the Oregonian editorial which was erroneous, misrepresented, and it was corrected by a letter to the editor.

So, I think you are perpetuating an erroneous position. You are quoting from the Oregonian editorial. The editorial was totally erroneous. The Oregonian was quoting something that did not exist in the Library of Congress report, and it was corrected by a letter that I wrote to the editor later.

**Mr. Baker.** I apologize.

All right. This possibility that has surfaced in *Kimball* v. *Callahan* is still at the top of our minds. What S. 2801 would do is provide to the Siletz Indian Tribe the vast, legal ability of the Bureau of Indian Affairs to pursue this case. Well, certainly, it would be a test case. Eventually, there will be a net in the river, there will be an arrest, and there will be a test case.

**Chairman Abourezk.** Well, that could happen right now. I really think you are totally wrong. I hate to disagree with you like that, but I think you are totally wrong with respect to the Siletz restoration bill. It has absolutely nothing to do with the——

**Mr. Baker.** The difference is in the economics and legal power that would be available to the tribe to secure——

**Senator Hatfield.** Again, Mr. Chairman, the gentleman is stating something totally erroneous, because the record proves to the contrary. It is very firmly established in the record there were no procedural rights granted. There were no rights that they would be able to trade upon in order to achieve hunting or fishing benefits. They did not have it in the bill or prior to the bill.

This is true with the legal counsel from the BIA. This was true in the record with the legal counsel from the Library of Congress, and it was true with the expert testimony of Mr. Wilkinson.

So if you repeat it from here till doomsday, it doesn't make it right; it doesn't make it accurate. I think the record ought to show what the facts of the case are.

I think that people ought to at least have intelligence and have an open mind enough to understand what the facts are. I just feel that it is very poor to bring up something and repeat it when it has been proven time and time again by people who are the experts in the field that it is blatantly false.

I think it is wrong to use the Siletz Indian restoration bill as an excuse to attack the whole problem of Indian fishing rights that were created by the *Belloni* and *Boldt* decisions. That is why this Commission is here today, to try to resolve that problem.

It doesn't do any good to throw sand up in people's eyes to divert their attention from the real issue from which we have gathered here today.

Chairman **Abourezk**. All right. I want to express my thanks to Senator Hatfield and to all the witnesses who have testified. Until we have the next set of hearings on this question, we will be waiting for any statements that you are going to send in.

A number of prepared statements have already been submitted which I now place in the record.

[The prepared statements follow:]

### PREPARED STATEMENT OF RAY A. BAKER, EUGENE, OREG.

Mr. Chairman, my name is Ray Baker. My address is 1718 Springdale Avenue, Eugene, Oreg. I am speaking today as an individual concerned citizen about the hunting and fishing rights of the Indian.

I am appalled that the Congress of these United States is not allowed to represent the majority of its citizens. I do not understand how a bill or treaties signed in 1850, 126 years ago, Mr. Chairman, cannot be updated to fit modern times and circumstances.

The decision handed down in the Pacific Northwest by Judge Boldt in February 1974, in July 1975, and by Judge Belloni of Oregon in May 1974, is shocking to the majority of the sport and commercial fishermen.

On May 8, 1974, U.S. District Judge Belloni rendered a supplemental decision in *United States* v. *Oregon*, holding that Indian treaty fishermen are entitled to have the opportunity to take up to 50 percent of the harvest of spring chinook salmon destined to reach the tribes' usual and accustomed fishing places on the Columbia River.

In the *Boldt* Decision of February 1974, the following points were included:

1. The 14 tribes had the right to fish for salmon and steelhead off reservation at their "usual and accustomed grounds and stations."
2. The State of Washington may not regulate treaty Indians off-reservation fishery for any reason without first submitting the proposed regulations to the district court for approval.
3. The district court will consider approving regulations necessary to assure proper escapement of fish for spawning and not for any other conservation reason.
4. Tribes, which the district court finds to be qualified for self-regulation, may not have their off-reservation fishing regulated by anyone.
5. The words "in common" in the treaties, reserve to the treaty tribes the right to all of the following:
   - *a.* All the fish they can catch on reservation plus,
   - *b.* All the fish they can eat; plus,
   - *c.* All the fish they use for ceremonies; plus,
   - *d.* Fifty percent of all the harvestable fish that reach their "usual and accustomed grounds and stations;" plus,
   - *e.* All the fish they can catch by hook and line anywhere in Washington in the regular sport season; plus,
   - *f.* All the fish they can catch with commercial gear anywhere in Washington away from "usual and accustomed grounds and stations;" plus
   - *g.* Extra fish to replace the fish that do not reach the "usual and accustomed grounds and stations."

On July 19, 1975, the U.S. State Department disapproved the portion of International Pacific Salmon Fisheries Commission's Regulations which divided authorized U.S. fishing time among specific types of gear. Judge Boldt ordered the State to permit Indians to fish with any type of gear during the entire period open to U.S. fishermen under International Pacific Salmon Fisheries Commission's Regulations.

We all know that fishing with "any type of gear'" can be a devastating thing. A river can be wiped out in a very short period of time; depending on the time it takes the fish to make their return cycle.

Concerning the Belloni Decision of fifty percent, I can only say wow! A couple of thousand people have superior rights over the approximate one half million people who fish the Columbia River System. Again, I can only find one word: appalling.

As I read the wording of the various treaties, my understanding is that the Indian is entitled to the taking of wild fish or natural runs. To me this does not include the hatchery fish which are financed by the sportsmen of the State, not the Federal Government.

Also, as I understand, that the taking of fish or game is for the sole purpose of self consumption or survival, and ceremonies; not for commercial sale. I know no person or family who can consume a ton or more of fish or game.

For the life of me, I cannot understand where all the talk about majority rules and equal rights has gone. It is not proper that a few thousand people, regardless of their race, stand to gain superior rights over millions of people.

Since the original treaties were signed in the 1850's, it seems to be very unjust that programs benefitting the Indians, such as health, education and welfare, have been updated and increased along with the standard of living, while at the same time they are allowed to maintain hunting and fishing rights as originally stated with no allowances for increases in populations, hunting and fishing pressures, and depletion of these resources.

At the same time, we must keep in mind that these increased benefits to the Indians are paid in tax dollars supplied mainly by the non-Indian races. This is true by population figures alone!

If the courts cannot be depended upon to recognize that non-Indians also have rights, then the problems should be received in Congress before they have a chance to reach the courtrooms.

I believe in equal rights for everyone regardless of race, color or religion. I was raised beliving that this is exactly what America stands for. Therefore, I believe that all fishermen or hunters should be regulated by the State agency in which they reside, according to existing circumstances; not the circumstances of one hundred twenty-six years ago.

Thank you.

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## Prepared Statement of Naomi Rainville Riebe, Member, Upper Umpqua Indian Council

American Indian Policy Review Commission, representatives of the Oregon Fish and Wildlife Commission, tribal representatives and interested persons, I bid you welcome:

My name is Naomi Rainville Riebe. I am an Indian whose roots are in the land of the Upper Umpqua, an area which is now largely the Umpqua National Forest. I am a member of the Upper Umpqua Indian Council. I have personal identity as an Indian and am active in obtaining restoration and Federal recognition for all tribes of western Oregon who were terminated by Public Law 588 dated August 13, 1954 and in furthering the rights and opportunities of these Indians.

I have two subjects to discuss. Namely, the current status of the tribes of western Oregon and the Upper Umpqua Tribal Wildlife Management Plan. The reason for this brief discussion is to make it clear that we are not 'jumping on the band wagon' for what benefits we might gain but to stress the fact that we are striving to help ourselves.

With regard to the current status of the tribes of western Oregon:

The Siletz Restoration Bill: This bill has been supported by the members of the Upper Umpqua Indian Council, as well as other tribes of western Oregon, and it is the hope of all that passage will be attained during this session of Congress.

The CITOWO Restoration bill: Work has been done on a bill known as the Confederated Indian Tribes of Western Oregon (CITOWO) Restoration Bill. The purpose of the bill is to restore various rights and privileges to the tribes of western Oregon.

The Upper Umpqua Indian Council retains the law firm of Hammons, Phillips & Jensen, Eugene, Oregon, to assist in restoration and other legal affairs of the tribe.

CETA Manpower Training Program: The Wit-ka Til-Li-Kum Office which means "our people now", is located at 989 S.E. Douglas Avenue, Rosburg, Ore., and serves that area for educational training and job counseling.

Drug and Alcohol Prevention Program: At present a survey is being made to justify the need among Indian people for a drug and alcohol prevention program in Douglas County, Oregon.

Indian Economic Development, Inc.: Late in July, Indian tribes of Coos, Curry, and Douglas County incorporated for the purpose of developing an Indian-owned aquaculture project and other economic developments. The Economic Development Administration will conduct a feasibility study in the near future.

Now, I will give a brief summary of the Upper Umpqua tribal wildlife management plan. At the regular monthly meeting of the Upper Umpqua Indian Council held Sunday, July 11, 1976, at 1 o'clock p.m. in Canyonville, Ore., a tribal wildlife management plan was adopted.

By the Treaty of November 19, 1854, with the Umpqua and Kalapuya, the Upper Umpqua Indians reserved the right to utilize the wildlife resources within the exterior boundaries outlined in the Treaty of 1854.

Our policy is to manage these resources conservatively and in accordance with the best traditions of our tribe.

Our regulations will establish standards and procedures for the proper management of our wildlife resources. By our efforts we shall restore our original territory to its former bounty and by doing so will preserve our tribal heritage.

An enforcement and management program has been established by the Council. A combination identification card and hunting license has been issued to approximately 150 members of the upper Umpqua Indians. Most of these people reside in the southern part of Douglas County.

Members of the Confederated Tribes of Coos, Lower Umpqua, and Suislaw, also made a decision to ignore hunting and fishing regulations on what they considered to be their tribal territory.

The Klamath Indian Tribe has adopted a fish and wildlife program for its members on the Old Klamath Reservation.

It is the general feeling of the members of all tribes involved in the wildlife management program that the rights to hunt and fish have never been taken away since no compensation was ever made for their lands, the tribes contend they still hold title to the land.

Now, in closing, your efforts and endeavors on our behalf are greatly appreciated by all tribal members of western Oregon. Your continued support is hereby solicited.

Thank you.

## UPPER UMPQUA TRIBAL WILDLIFE MANAGEMENT PLAN

### *Section I.—Background and Definitions*

### Purpose

By the Treaty of November 19, 1854, with the Umpqua and Kalapuya, the Upper Umpqua Indians reserved the right to utilize the wildlife resources within the exterior boundaries outlined in the Treaty of 1854. Our policy is to manage these resources conservatively and in accordance with the best traditions of our tribes. Our regulations will establish standards and procedures for the proper management of our wildlife resources. By our efforts, we shall restore our original territory to its former bounty and by doing so, will preserve our tribal heritage.

### Authority

The right to utilize wildlife resources within the exterior boundaries outlined in the Treaty of 1854 was reserved by the Upper Umpqua Indian Tribe in the aforementioned Treaty.

### Effective Date

This plan shall be effective as of July 1, 1976.

### Scope

These regulations shall govern the taking of wildlife by members of the Upper Umpqua Tribe within the exterior boundaries of the area outlined in the treaty on land in State or Federal ownership and on private land where the owner has consented to the exercise of Upper Umpqua and Kalapuya Treaty rights.

### Definitions

As used in these regulations:

(a) "Exterior boundaries" means that portion of land outlined in the treaty with the Umpqua and Kalapuya dated November 29, 1854.

(b) "Big game" means antelope, bear, coyote, cougar, deer, elk, moose, mountain goat, mountain sheep, wolf, and other large animals.

(c) "Commercial" means the sale or exchange, for anything of value, of wildlife taken from the area, between enrolled members and non-Indians.

(d) "Complainant" means a game warden or wildlife biologist who has issued a citation, or any enrolled member who has filed an affidavit alleging a violation.

(e) "Enrolled member" means any person who is a member of the Upper Umpqua Tribe.

(f) "Executive Committee" means the Executive Committee of the Upper Umpqua Tribe.

(g) "Fishing" means the taking or attempt at taking a fish.

(h) "Fur-bearing animal" means beaver, fisher, fox, marten, mink, muskrat, otter, raccoon, et cetera.

(i) "Game bird" means ducks, goose, swan, dove, pigeon, gross, sage hen, pheasant, quail, woodcock, crane, wild turkey, et cetera.

(j) "Game Commission" means the Upper Umpqua Indian Game Commission.

(k) "Game Fish" means trout, steelhead, salmon, catfish, bass, sun fish, crappie, sturgeon, perch, mullet, bullfrog, et cetera.

(l) "Hunting" means the taking or attempted taking of any big game animal or game bird.

(m) "Upper Umpqua Tribe" means the members of the Upper Umpqua Indian Tribe.

(n) "Taking" means the killing, harassing, pursuing, or capturing of wildlife.

(o) "Trapping" means the taking or attempted taking of any fur-bearing animal with traps or similar devices.

(p) "Violation" means any failure by any person subject to this plan to comply fully with these regulations.

(q) "Wildlife" means any undomesticated animal.

(r) "Hunting year" means the year beginning on July 1st of each calendar year and continuing through June 30th of each succeeding calendar year.

### Distribution of this plan

(a) *Posting.*—The Game Commission shall arrange posting for a 60-day period.

(b) *Availability of copies.*—The Game Commission shall make sufficient copies of this plan so that copies will be available to all tribal members upon request.

### Amendments

This plan may be amended by the Game Commission, subject to the approval of the executive committee.

### Enforcement and Management

Generally.—The Game Commission will bear the responsibility as necessary for proper management of the wildlife resources.

### Judicial System

If necessary, a Judicial Committee may be formed. The Committee shall be selected by the Game Commission with the approval of the Executive Committee. Each Judicial Committee member shall be an enrolled member of the Upper Umpqua Indian Tribe at least twenty-one (21) years of age. No Judicial Committee member shall be a member of the Game Commission or Executive Committee.

### Wildlife Code

Generally shall be designated by the Game Commission.

### Big Game Hunting Regulations

Shall be outlined by the Game Commission.

### Game Bird Hunting Regulations

Shall be outlined by the Game Commission.

### Game Fishing Regulations

Shall be outlined by the Game Commission.

### Trapping Regulations

Shall be outlined by the Game Commission.

### Violations And Penalties

*Violations.*—Any violations shall be reviewed by the Game Commission and the Executive Committee.

*Penalties.*—Enrolled members convicted of any violation shall receive such penalty as may be appropriated at the discretion of the Judicial Committee.

### Mistake or Lack of Knowledge

(a) Acting with a mistake in understanding of any provision of this plan.
(b) Failure to be fully aware of any provision of this plan.

(Original Draft—June 23, 1976)

Adopted this 11th day of July, 1976 at Canyonville, Oregon.

CHARLES PARAZOO,
DELBERT D. RAINVILLE,
WALLACE RONDEAU,
SUE M. SHOFFER,
JERRY RONDEAU,
Executive Council Members.

## AMENDMENTS

### Big Game

I. All meat taken from Big Game Animals will be used for own consumption only. (No selling, trading or bartering will be done.)

II. Only persons holding a tribal license may accompany another person with a tribal license.

III. The use of spotlights or any other artificial lights are prohibited.

IV. No female species of deer, elk moose, mountain goat or mountain sheep will be legal for killing.

### Fish

I. It is prohibited to use any kind of gillnet or facsimile thereof in any river or its tributaries or any lake within the tribal territories.

II. No explosives of any kind will be used for the killing of fish.

### Birds

I. No female species of Game Birds will be taken in a period between the time mating season begins and the young leave their mother.

### General Rules

I. No hunting or fishing on any private land which is posted or in other ways designated.

II. Awarding of Tribal Hunting and Fishing Card obligates the holder to cooperate with the State Game agencies in reporting of any violation of the State Wildlife Code which the holder may witness or have knowledge of.

III. Any person or persons having a tribal license caught violating any tribal law will appear before Tribunal Council to receive penalty on violation.

IV. All precautions will be taken to fully preserve the fish and wildlife habitats and population.

This is to certify that

________________________________________

who is an enrolled member of the Upper Umpqua Indian Council is entitled to hunt, fish and trap on land designated by the Tribal Council.

Amaryllis J. Freeman
Chairperson
Nova Knutz
Secretary

Dated____________________________________

## UPPER UMPQUA INDIAN COUNCIL

| | | | |
|---|---|---|---|
| Name and Address | | | Tribe(s)<br>Tribe(s) |
| Sex | Date of Birth | Height | Enrollment No. |
| Weight | Color Hair | Color Eyes | Soc. Sec. No. |

Signature____________________________________

The Oregonian
PORTLAND, OREGON
D. [illegible]

JUN 30 1976

# Indian demands grow

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Oregon Journal
PORTLAND, ORE.
D. 139,[illegible]32 CAT. 131.534

JUL 5 1976

# Time To Start Rebuilding Chemawa

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WILLIAM J. VAN NESS, CHIEF COUNSEL

United States Senate
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

September 8, 1976

Ms. Naomi R. Riebe
Tribal Counselor
887 Fremont Avenue
Eugene, Oregon 97404

Dear Ms. Riebe:

Thank you for your most recent letter. I appreciate your concern about the problems of terminated Indians in Western Oregon and, as you know, I've been working on the Siletz Restoration Act in the hope of solving one of the issues. However, it seems clear at this time that the legislation will not be enacted into law this year, and it is equally clear that no termination legislation will be enacted this year. I intend to continue to push for Senate passage of the Siletz bill during this session of Congress. I believe that other legislation must await the findings of the American Indian Policy Review Commission, which is in the process of developing its report.

Kindest regards.

Sincerely,

Mark O. Hatfield
United States Senator

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The Oregonian
PORTLAND, OREGON
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JUN 30 1976

## Indian demands grow

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Oregon Journal
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## Time To Start Rebuilding Chemawa

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**Page 20 B** REGISTER-GUARD, Eugene, Ore., Saturday, September 11, 1976

# Rule affirms tribe descendant rights

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Editorials

The Sunday Oregon

Founded Dec. 4, 1850. Established as a daily Feb. 4, 1861. Sunday Oregonian established Dec.
Sunday by the Oregonian Publishing Co., Oregonian Bldg., 1320 SW Broadway, Portla

MICHAEL J. FREY, Chairman
FRED A. STICKEL, President and Publisher
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ALBERT L. McCREADY, Managing Editor
HERBERT LUNDY, Editor, Editorial Page

JULY 18, 1976

# Siletz issue basic

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# Coos Indians to defy Oregon's game rules

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*On fishing, hunting*

# Coast Indians served notice

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# Oregon, Washington set Columbia fishing season

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# The public forum

## Let's fight the bureaucracy

## Not in a race with the Indians

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B4 THE OREGONIAN, FRIDAY, AUGUST 6, 1976

# Klamaths draft wildlife plan

Page 20. The News-Review, Roseburg, Oregon—Saturday, September 11, 1976

## Judge issues ruling

# Indians retain ancestoral hunting rights

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## PREPARED STATEMENT OF DANIEL H. HARRIS, RESIDENT, ALOHA, OREG.

On the enclosed copy of a newspaper clipping, I have highlighted a legal opinion about a local situation, that Siletz Indians say they have the right to fish and hunt free of state regulation on their old reservation. The court cases cited in this editorial concerned Klamath and Menominee Indians. The outcome of these cases was heavily influenced by Public Law 280, passed by Congress in 1928 (I believe). Considering the controversy, confrontations, inequitable game law regulation, and potential resources abuse, I submit that the court decisions may not have been in accord with the intent of Congress. At the very least, P.L. 280 should be reviewed and redefined, to specifically state Congress's position on the rights of Indians. We in the Northwest are sick of having courts write our law. Writing law, after all, is the responsibility of Congress.

Our newly reorganized Oregon Fish and Wildlife Department has gained strength and purpose in its battle to preserve and enhance the wildlife we have left despite the demands of several user groups. Now it is faced with a group that holds all the cards, that claims immunity to laws designed to protect wildlife resources. Now I do not believe that the Siletz tribe can net all the fish or trap all the game in a twenty-one hundred square mile area; but given another court case similar to *Kimbal* v. *Kallahan*, abuses will occur. Who will police them? The Tribal Council? Will the Council even care about land inside the old boundary not part of a future reservation? How well do most tribes police game law violators? Do some of them even try?

Again referring to the newspaper editorial, "Congress has plenary power * * *", I suggest that Congress should use that power to give State police an equal enforcement capability on all the citizens of the State except on legally defined reservation land.

I am a Native American, born near here, and an Oregon resident for my 32 years. I accept neither credit nor blame for my ancestry, nor for anything else that happened before my birth. The pride that an Indian person feels for his culture's ideals and achievements is no different than the pride I feel for mine. By the same token, both cultures have had their black moments in history. Neither is justification for discrimination.

Now it appears that the law treats me less favorably with respect to the enjoyment (or exploitation) of wildlife resources than it treats a BIA certified Indian.

What have we adopted; a caste system? Surely such law does not pass the Constitutional test of "equal protection".

I respect the sovereignty of Indian reservations, but I expect the law, and specifically P.L. 280, to treat us all equally on United States soil.

Respectfully submitted, Daniel H. Harris, 19789 Southwest Prospect Lane, Aloha, Oregon 97005.

Chairman ABOUREZK. The meeting of the American Indian Policy Review Commission is now adjourned.

[Whereupon, the meeting was adjourned.]

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